

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED NINTH CONGRESS

SECOND SESSION

APRIL 25, MAY 2, MAY 24, AND JUNE 15, 2006

PART 4

Serial No. J-109-4

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CONTENTS

TUESDAY, APRIL 25, 2006

STATEMENT OF COMMITTEE MEMBER

Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah	Page 1
---	-----------

PRESENTERS

Boxer, Hon. Barbara, a U.S. Senator from the State of California presenting Milan D. Smith, Jr., Nominee to be Circuit Judge for the Ninth Circuit	2
Feinstein, Hon. Dianne, a U.S. Senator from the State of California presenting Milan D. Smith, Jr., Nominee to be Circuit Judge for the Ninth Circuit	3
Lautenberg, Hon. Frank, a U.S. Senator from the State of New Jersey presenting Renee Marie Bumb, Nominee to be District Judge for the District of New Jersey, Noel Lawrence Hillman, Nominee to be District Judge for the District of New Jersey, Peter G. Sheridan, Nominee to be District Judge for the District of New Jersey, and Susan Davis Wigenton, Nominee to be District Judge for the District of New Jersey	5
Menendez, Hon. Robert, a U.S. Senator from the State of New Jersey presenting Renee Marie Bumb, Nominee to be District Judge for the District of New Jersey, Noel Lawrence Hillman, Nominee to be District Judge for the District of New Jersey, Peter G. Sheridan, Nominee to be District Judge for the District of New Jersey, and Susan Davis Wigenton, Nominee to be District Judge for the District of New Jersey	6
Smith, Hon. Gordon, a U.S. Senator from the State of Oregon presenting Milan D. Smith, Jr., Nominee to be Circuit Judge for the Ninth Circuit	4

STATEMENTS OF THE NOMINEES

Bumb, Renee Marie, Nominee to be District Judge for the District of New Jersey	51
Questionnaire	52
Hillman, Noel Lawrence, Nominee to be District Judge for the District of New Jersey	78
Questionnaire	79
Sheridan, Peter G., Nominee to be District Judge for the District of New Jersey	106
Questionnaire	107
Smith, Milan D., Jr., Nominee to be Circuit Judge for the Ninth Circuit	8
Questionnaire	11
Wigenton, Susan Davis, Nominee to be District Judge for the District of New Jersey	138
Questionnaire	139

TUESDAY, MAY 2, 2006

STATEMENTS OF COMMITTEE MEMBERS

Brownback, Hon. Sam, a U.S. Senator from the State of Kansas	161
Feingold, Hon. Russell D., a U.S. Senator from the State of Wisconsin	325

IV

PRESENTERS

Page

Camp, Hon. Dave, a Representative in Congress from the State of Michigan presenting Sean F. Cox, Nominee to be District Judge for the Eastern District of Michigan, and Thomas L. Ludington, Nominee to be District Judge for the Eastern District of Michigan	165
Levin, Hon. Carl, a U.S. Senator from the State of Michigan presenting Sean F. Cox, Nominee to be District Judge for the Eastern District of Michigan, and Thomas L. Ludington, Nominee to be District Judge for the Eastern District of Michigan	162
Norton, Hon. Eleanor Holmes, a Delegate in Congress from the District of Columbia presenting Kenneth L. Wainstein, of Virginia, Nominee to be Assistant Attorney General, National Security Division, Department of Justice	164
Stabenow, Hon. Debbie A., a U.S. Senator from the State of Michigan presenting Sean F. Cox, Nominee to be District Judge for the Eastern District of Michigan, and Thomas L. Ludington, Nominee to be District Judge for the Eastern District of Michigan	163

STATEMENTS OF THE NOMINEES

Cox, Sean F., of Michigan, Nominee to be District Judge for the Eastern District of Michigan	203
Questionnaire	204
Ikuta, Sandra Segal, of California, Nominee to be Circuit Judge for the Ninth Circuit	166
Questionnaire	167
Ludington, Thomas L., of Michigan, Nominee to be District Judge for the Eastern District of Michigan	228
Questionnaire	229
Wainstein, Kenneth L., of Virginia, Nominee to be Assistant Attorney General, National Security Division, Department of Justice	257
Questionnaire	258

QUESTIONS AND ANSWERS

Responses of Sandra Ikuta to questions submitted by Senator Boxer	330
Responses of Kenneth Wainstein to questions submitted by Senator Leahy	336

SUBMISSIONS FOR THE RECORD

Allen, Hon. George, a U.S. Senator from the State of Virginia, prepared statement	342
Warner, Hon. John, a U.S. Senator from the State of Virginia, prepared statement	344

WEDNESDAY, MAY 24, 2006

STATEMENT OF COMMITTEE MEMBER

Graham, Hon. Lindsey O., a U.S. Senator from the State of South Carolina	347
---	-----

PRESENTERS

Burr, Hon. Richard, a U.S. Senator from the State of North Carolina, presenting Frank D. Whitney, Nominee to be District Judge for the Western District of North Carolina	349
Dole, Hon. Elizabeth, a U.S. Senator from the State of North Carolina, presenting Frank D. Whitney, Nominee to be District Judge for the Western District of North Carolina	347

STATEMENTS OF THE NOMINEES

Guilford, Andrew J., of California, Nominee to be District Judge for the Central District of California	350
Questionnaire	352

V

	Page
Whitney, Frank D., of North Carolina, Nominee to be District Judge for the Western District of North Carolina	377
Questionnaire	378

THURSDAY, JUNE 15, 2006

STATEMENTS OF COMMITTEE MEMBERS

Coburn, Hon. Tom, a U.S. Senator from the State of Oklahoma	409
Leahy, Patrick J., a U.S. Senator from the State of Vermont, prepared statement	574

PRESENTERS

Cochran, Hon. Thad, a U.S. Senator from the State of Mississippi presenting Daniel P. Jordan, III, Nominee to be District Judge for the Southern District of Mississippi	414
Fortuño, Hon. Luis G., the Resident Commissioner in Congress from the Commonwealth of Puerto Rico presenting Gustavo A. Gelpi, Nominee to be District Judge for the District of Puerto Rico	412
Inhofe, Hon. James, a U.S. Senator from the State of Oklahoma presenting Jerome A. Holmes, Nominee to be Circuit Judge for the Tenth Circuit	411
Lott, Hon. Trent, a U.S. Senator from the State of Mississippi presenting Daniel P. Jordan III, Nominee to be District Judge for the Southern District of Mississippi	410

STATEMENTS OF THE NOMINEES

Holmes, Jerome, A., of Oklahoma, Nominee to be Circuit Judge for the Tenth Circuit	417
Questionnaire	418
Jordan, Daniel P., III, of Mississippi, Nominee to be District Judge for the Southern District of Mississippi	466
Questionnaire	467
Gelpi, Gustavo A., of Puerto Rico, Nominee to be District Judge for the District of Puerto Rico	507
Questionnaire	508

QUESTIONS AND ANSWERS

Responses of Jerome Holmes to questions submitted by Senators Leahy, Kennedy, Feingold, and Durbin	546
--	-----

SUBMISSIONS FOR THE RECORD

Binder, Steven, Deputy Public Defender, County of San Diego, San Diego, California, letter	566
Crantfield, Rev. Glenn, President and Chief Executive Officer, City Rescue Mission, Oklahoma City, Oklahoma, letter	567
Hoch, William H., Crowe & Dunlevy, Oklahoma City, Oklahoma, letter	568
Holloway, William J., Jr., Judge, Tenth Circuit, U.S. Court of Appeals, Oklahoma City, Oklahoma, letter	569
Holmes, Jerome, A., of Oklahoma, Nominee to be Circuit Judge for the Tenth Circuit, letter	570
Inhofe, Hon. James, a U.S. Senator from the State of Oklahoma, statement and attachment	571
Lott, Hon. Trent, a U.S. Senator from the State of Mississippi, statement	575
McCampbell, Robert G., Crowe & Dunlevy, Oklahoma City, Oklahoma, letter	578
Murphy, Brooke S., Crowe & Dunlevy, Oklahoma City, Oklahoma, letter	580

ALPHABETICAL LIST OF NOMINEES

Bumb, Renee Marie, Nominee to be District Judge for the District of New Jersey	51
--	----

VI

	Page
Cox, Sean F., of Michigan to be District Judge for the Eastern District of Michigan	203
Gelpi, Gustavo A., of Puerto Rico, to be District Judge for the District of Puerto Rico	507
Guilford, Andrew J., of California, to be District Judge for the Central District of California	350
Hillman, Noel Lawrence, Nominee to be District Judge for the District of New Jersey	78
Holmes, Jerome, A., of Oklahoma, to be Circuit Judge for the Tenth Circuit ...	417
Ikuta, Sandra Segal, of California, to be Circuit Judge for the Ninth Circuit ...	166
Jordan, Daniel P., III, of Mississippi, to be District Judge for the Southern District of Mississippi	466
Ludington, Thomas L., of Michigan to be District Judge for the Eastern District of Michigan	228
Sheridan, Peter G., Nominee to be District Judge for the District of New Jersey	106
Smith, Milan D., Jr., Nominee to be Circuit Judge for the Ninth Circuit	8
Wainstein, Kenneth L., of Virginia, to be Assistant Attorney General, National Security Division, U.S. Department of Justice	257
Whitney, Frank D., of North Carolina, to be District Judge for the Western District of North Carolina	377
Wigenton, Susan Davis, Nominee to be District Judge for the District of New Jersey	138

NOMINATIONS OF MILAN D. SMITH, JR., OF CALIFORNIA, TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT; RENEE MARIE BUMB, OF NEW JERSEY, TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY; NOEL LAWRENCE HILLMAN, OF NEW JERSEY, TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY; PETER G. SHERIDAN, OF NEW JERSEY, TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY; AND SUSAN DAVIS WIGENTON, OF NEW JERSEY, TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

TUESDAY, APRIL 25, 2006

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:17 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch, presiding.

Present: Senators Hatch and Feinstein.

**OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S.
SENATOR FROM THE STATE OF UTAH**

Senator HATCH. I am going to get started. Senator Feinstein is coming, and we will interrupt whatever we are doing, including Senators at the table, when Senator Feinstein gets here because she can only be here for a short while and then has to leave. But why don't we start with you, Senator Smith, and then we will start with you, Senator Boxer.

Senator SMITH. If I may, may I have Senator Boxer go first?

Senator HATCH. That would be great.

Senator SMITH. She is the Senator of the State.

Senator HATCH. Oh, that is right. Excuse me. She is from the State of California. Sorry, Senator Boxer. We are happy to have you.

Senator BOXER. It is only 37 million people.

[Laughter.]

Senator HATCH. That high now?

Senator BOXER. Honestly.

Senator HATCH. Another 3 million illegal aliens.

Senator BOXER. No, no, no.

[Laughter.]

Senator HATCH. Senator Boxer, we are honored to have you here.

PRESENTATION OF MILAN D. SMITH, JR., NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT, BY HON. BARBARA BOXER, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Mr. Chairman, I am speechless. Anyway, this is a wonderful day, and I so thank you for allowing me to be here on behalf of Milan Smith, and I am thrilled to be here. You know, blood is thicker than water, but I almost feel like part of the family in this sense: that I have wanted this for a long time. I think this nomination is going to be great for this country. And so I am here to offer my strong support for Milan Smith. He is very well regarded by those who know him and work with him, and I am supremely confident that should he be confirmed, he will discharge his responsibilities with dignity, with integrity, and with intelligence.

We have had so many tough arguments over judges, and here is one where I hope we are not going to have one at all, because I think that this particular candidate just meets every standard that one could want, whether one is a Republican or a Democrat.

Mr. Smith received his B.A. cum laude from Brigham Young University in 1966, his J.D. from the University of Chicago Law School in 1969, and from there he moved to California to embark on a very impressive legal career. He joined the prestigious firm of O'Melveny & Myers upon his graduation, and he later started his own firm, where he is the managing partner.

Mr. Smith's career, however, has not been limited to private practice. He has dedicated his time and his expertise to public service as well.

Mr. Chairman, in 1984, Governor Deukmejian appointed Mr. Smith to the Governing Board of the Los Angeles State Building Authority, where he served as president until 1992. Since then, he has asked at the Authority's general counsel.

In 1987, Mr. Smith also was appointed as a member of California's Fair Employment and Housing Commission, where he served for 3 years. Throughout his work for the citizens of California, Mr. Smith has demonstrated compassion, courage, and understanding of the hardships faced by average citizens. He has shown a willingness to examine all sides of an issue and to develop thoughtful and balanced solutions to problems.

Mr. Chairman, he has fought for those who have been discriminated against, and he has added his strong voice to them, and he has shown courage. And I now know why he is such a strong supporter of equal rights for women, because I have met many of the women in his family, whom you will, I am sure, meet when, I am sure, Gordon will introduce them.

So, in summary, through his public and his private work, Mr. Smith has earned the admiration of his colleagues, and today Mr. Smith has come to Washington.

[Laughter.]

Senator BOXER. And I hope when he leaves Washington, the chances that he will become—that he will be elevated to this unbelievable position as a Ninth Circuit judge will be pretty much a slam-dunk, I hope. He is an individual of great character, an independent thinker. I have profound respect for him, and it is a very happy day for me. And I would love to stay here if I might to hear my colleague's comments and also that of Senator Feinstein's, if I might stay for those.

Senator HATCH. Well, thank you. We are honored to have you here, Senator Boxer, and we appreciate the kind remarks that you have given on behalf of Mr. Smith.

Senator Feinstein, we will turn to you.

PRESENTATION OF MILAN D. SMITH, JR., NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT, BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Well, thank you very much, Mr. Chairman. I am sure I could probably just do this by saying "Ditto" after what my friend and colleague said.

[Laughter.]

Senator FEINSTEIN. But I would like to also put in my 2 cents' worth, and it is a great pleasure to join with Senator Boxer in introducing Milan D. Smith, Jr., who is nominated for the Ninth Circuit Court of Appeals.

Milan Smith has had a long and distinguished legal career in California. After graduating for the university of Chicago Law School in 1969, he moved to Los Angeles, and he has been an important part of the legal community there ever since.

In 1972, he founded the law firm now known as Smith, Crane, Robinson & Parker, and so for the last 34 years, he has been associated with that law firm and engaged in a wide-ranging legal practice in business and real estate law.

As an attorney, he has, I think, demonstrated a commitment to serving the public, from presiding over the Governing Board of the Los Angeles State Building Authority, to acting as Vice Chairman of Ettie Lee Homes for Youth. After reviewing his record, a majority of the ABA rated him well qualified, and as is obvious, he is the brother of our colleague, Oregon Senator Gordon Smith, who is sitting at the table. What some of you may not know, unless Senator Boxer mentioned it, his maternal grandfather, Jesse Udall, was the Chief Justice of the Arizona Supreme Court, so there is real precedent for familial service on our Nation's highest courts.

I am very pleased to join with my colleague in supporting his nomination, and I urge a speedy confirmation.

Senator HATCH. Well, thank you, Senator Feinstein. We appreciate you being here, and we appreciate your kind remarks.

Senator Smith, we will turn to you, and then we are going to go to Senator Menendez.

PRESENTATION OF MILAN D. SMITH, JR., NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT, BY HON. GORDON SMITH, A U.S. SENATOR FROM THE STATE OF OREGON

Senator SMITH. Thank you, Mr. Chairman. May I express to my colleagues from California how much their presence here means to me and their kind words about my big brother; also to you, Mr. Chairman, for your chairing this hearing, by your request; and also may I thank President Bush for his confidence in Milan and for moving this nomination.

As you might imagine, having one's brother nominated to this high court, which has jurisdiction over the State of Oregon, is a very moving thing for me personally. I am deeply honored that my kinsman will be a Federal judge. As you can also imagine, my feelings are a little tender right now, so I have written out what I want to say.

Because my emotions are somewhat close to the surface this morning, as I drove to work, when I got there, I turned to a book that I often turn to, to find wisdom. There I found in the Book of Kings a statement that I think is appropriate for this occasion: "And God gave Solomon wisdom and understanding exceeding much, and largeness of heart, even as the sand that is on the sea shore. And Solomon's wisdom excelled the wisdom of all the children and of all the wisdom of Egypt. For he was wiser than all men, and his fame was in all nations round about."

Mr. Chairman, without equating Milan to Solomon, I can, without equivocation, speak to his many Solomon-like qualities. Milan, Jr., is the eldest of Milan and Jessica Udall Smith's ten children. I am the eighth in that number and Milan's youngest brother.

In my 54 years of life, Milan has been an example and force for good in our family and, since the death of our parents, has been truly a family leader and friend to us all, through times of tears and times of cheers.

For as far back as my memory serves, I have been witness to a concourse of people who have sought him out for wisdom and judgment, for counsel and comfort, on matters great and small. These have included my parents, myself, and all of my brothers and sisters, cousins and kinsmen from far and wide, his own six children, and, of course, his legions of legal clients over many decades.

Without respect of persons, he has been a wise friend and a good shepherd to all. His academic preparations and provident life speak for themselves. But, in sum, what I can say is that he is one of the wisest men I have ever known. He has an understanding heart, a heart for judgment. He is possessed of the spirit of discernment between good and bad, right and wrong, the just and the unjust.

I cannot think of a time or a court when a man of his quality and preparation are more sorely in need than this one and in our time. While I doubt that Milan's fame as a judge will spread Solomon-like throughout the world, I do predict that those who come before his court will find his judgments will mean the world to them.

His judgments do mean the world to me.

So, my Senate colleagues, I commend to you a man who has dusted me off many times, as a boy and as a man when I have fallen, and showed me the way to better paths, to life's sunny up-

lands—my brother, Milan Dale Smith, Jr. I urge his confirmation to the Ninth Circuit Court of Appeals.

I thank you, Mr. Chairman.

Senator HATCH. Well, thank you, Senator Smith. I have sat through literally about a thousand of these, and I have to say I have never heard a more eloquent presentation. However, I chalk it up to the fact that he is your brother.

[Laughter.]

Senator HATCH. Actually, it was really great, I think. Of course, I have known Milan for a while, too, and I have a very high opinion of him and of his legal abilities. So we are really happy you Senators could be with us. And, Senator Feinstein, we are glad you could be here as well.

We are going to turn—I am sorry, Senator Menendez. I have to go to Senator Lautenberg first, and then I will come to you.

PRESENTATION OF RENEE MARIE BUMB, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY; NOEL LAWRENCE HILLMAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY; PETER G. SHERIDAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY; AND SUSAN DAVIS WIGENTON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, BY HON. FRANK LAUTENBERG, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thanks, Mr. Chairman. Sorry I am rushing in kind of last minute here, but I was stuck on a train in here and it took just a minute more than we would like, so my apologies, because I am so fortunate, Senator Menendez and I have four wonderful candidates to present to you, Mr. Chairman, and to the Judiciary Committee. They are Renee Bumb, Susan Wigenton, Noel Hillman, and Peter Sheridan. They have all been nominated to serve as district court judges in New Jersey.

Now, I know each of them has family members here today, and I am sure that they will want to take the opportunity to make introductions of them.

Mr. Chairman, people often look at New Jersey on the map and think that they are looking at a small State, but they are wrong. While we are relatively small geographically, we have the tenth largest population in the country. And despite our large population, the entire State shares one Federal judicial district, and it has been at times difficult to make sure all of the regions of the State feel properly resented—represented—I am sorry, they are resented—represented in the Federal district of New Jersey.

[Laughter.]

Senator LAUTENBERG. They call that Freudian, I guess, Mr. Chairman.

Senator HATCH. Really. Go ahead.

Senator LAUTENBERG. What is great about the group of nominees before us today is that they come from different regions of our State and add to the diversity of the Federal bench.

Renee Bumb, right behind me on the left, is currently the attorney in charge of the Camden U.S. Attorney's Office. She has a reputation as an excellent prosecutor. She has handled cases ranging

from drug trafficking to white-collar crime, and since 2000, Ms. Bumb has supervised all of the attorneys in her office while continuing to try cases herself, specifically those dealing with public corruption.

Now, Judge Susan Wigenton has been a full-time Federal magistrate judge in Newark since 2000. Before that, she served as a part-time Federal magistrate and worked as a solo practitioner focusing on civil rights cases. Judge Wigenton also worked in a law firm and served as a public defender in Asbury Park, New Jersey. She has been a first-rate magistrate judge, and I am confident that Judge Wigenton will make an excellent district court judge.

Peter Sheridan has spent the last decade as a named partner at Graham, Curtin & Sheridan in Trenton. Prior to that he has worked in private practice at other law firms and has a strong record of public service. He served as Director of the Authorities Unit for the State of New Jersey, Vice President and General Counsel of the Atlantic City Casino Association, and an attorney with the Port Authority of New York and New Jersey.

Now, Mr. Noel Hillman served as the Chief of the Public Integrity Section at the Department of Justice, leading a team of 30 attorneys who investigate and prosecute public corruption cases nationwide. Now, Mr. Hillman has a reputation for taking on crimes that undermine public confidence in our political system no matter how political or controversial. Before he went to the Justice Department, Mr. Hillman served as Deputy Chief of the Criminal Division of the U.S. Attorney's Office in New Jersey.

And so, Mr. Chairman, we have four excellent nominees who will represent New Jersey and the country well, and I am proud not only to introduce them to the Committee, but to enthusiastically endorse their confirmation, and I hope that the Judiciary Committee will do the same.

Thank you very much.

Senator HATCH. Thank you very much, Senator. That is high praise for these nominees.

Senator MENENDEZ, we are happy to welcome you to the Committee and look forward to hearing for you.

PRESENTATION OF RENEE MARIE BUMB, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY; NOEL LAWRENCE HILLMAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY; PETER G. SHERIDAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY; AND SUSAN DAVIS WIGENTON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, BY HON. ROBERT MENENDEZ, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator MENENDEZ. Thank you, Mr. Chairman. I am very pleased to be once again before the Committee to testify along with my distinguished senior colleague, Senator Lautenberg, and the privilege of introducing to the Committee four more distinguished New Jerseyans that have been nominated by the administration to serve on the Nation's judiciary system.

I do not have the great privilege that Senator Smith had in terms of a family member who is so distinguished, but I do have

the enthusiasm that he expressed for his brother for these four nominees that are before the Committee. We had the privilege about a month ago of introducing Michael Chagares to the Committee as a circuit judge for the Third Circuit, which he received a very substantial and unanimous vote in the Senate. And today these nominees for the district court I think are also exceptional individuals.

The confirmation of a judge to a lifetime appointment is a vital responsibility given to this body by the Constitution and one that I know I and certainly the members of this Committee take quite seriously. So I appreciate the chance to also join in in presenting to the Committee Renee Bumb, Noel Hillman, Peter Sheridan, and Susan Wigenton.

It is gratifying to see, as I sat in the back for a few minutes, so many of the family members who are here today for this important day in each of their loved ones' lives, and it would be too many to recognize. I am sure they will at some point as they each come forth.

It is an honor that we take pride in that has been bestowed on each of these fellow New Jerseyans, so let me very briefly say a few words about each of these nominees.

Ms. Bumb graduated from Ohio State University and the Rutgers School of Law, both with honors. She began her career in private practice and has spent the past 15 years working in the U.S. Attorney's Office for the District of New Jersey. She is a two-time recipient of the Director's Award, the highest award given to an Assistant U.S. Attorney, and for the last 6 years, she has served as the Attorney in Charge of the Camden Office.

Mr. Hillman is a graduate of Monmouth College, Seton Hall University School of Law, the New York University School of Law, and he also has started his career in private practice before spending the last 15 years at the Department of Justice. He has received the Executive Office of the U.S. Attorneys Director's Award twice and in 2004 received the Attorney General's Award for Fraud Prevention, and he currently serves as the senior counsel to the Assistant AG of the Criminal Division where, until recently, he was the Chief of the Public Integrity Section, and he did so with great distinction.

Mr. Sheridan graduated from my alma mater, St. Peter's College, then Seton Hall School of Law, and unlike Ms. Bumb and Mr. Hillman, he began his career in public service by working at the Office of the New Jersey Solicitor for the Port Authority of New York and New Jersey, an important regional bi-State agency, and later served in the administration of former Governor Tom Kean. For the past 11 years, he has been a shareholder and director of a prestigious firm, Graham, Curtin & Sheridan.

And, finally, Judge Wigenton graduated from Norfolk State University and the Marshall White School of Law from the College of William & Mary. She started her career in public service as a public defender and at the New Jersey Board of Examiners. Judge Wigenton then went on to private practice and in 1996 was the second of only four African-American women in the State of New Jersey to be named as a partner in a major law firm. She then went back to public service and has spent over 8 years as a U.S. mag-

istrate judge for the District of New Jersey, and she has performed exceptionally as a magistrate judge.

Mr. Chairman, there is no higher calling than the calling of public service. That is why I know that both Senator Lautenberg and I are so pleased to see people of this quality who are willing to serve our Nation in the administration of justice. I am happy to join Senator Lautenberg in commending to the Committee each of these nominees and to very strongly be supportive of the Committee's endorsement of their nominations.

Senator HATCH. Well, thank you so much. Because of both your recommendations, I am prepared to confirm them right now.

[Laughter.]

Senator HATCH. I appreciate you both coming. We really appreciate that.

Mr. Smith, we will take you first, and I have very few questions to ask of you, but if you would, do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SMITH. I do.

Senator HATCH. Thank you. I have known you for a long time, and I have known your family for a long time, and, of course, Gordon is a partner here in the Senate. I knew your Dad way back when, and I just have to say there isn't a better family on the face of the Earth, as far as I am concerned, and you come not only highly recommended by your brother and others, but also I am fully aware of your legal practice, what you have done in your practice, and the fact that you have worked with some prestigious law firms and basically have built your own law firm into something of real value.

This is one of the most important positions on Earth, the Ninth Circuit Court of Appeals, and, frankly, I have no doubt in my mind that you can fulfill that position as a judge on that circuit. In fact, I am counting on you fulfilling it in every way.

I am just going to ask you one question because I think everybody on this Committee is aware of you and your excellent reputation, and if they are not, we will make them aware. You have distinguished yourself as one of Southern California's premier attorneys in the area of complex commercial litigation, and obviously you have gained some insight from the professional experience that will influence your decisionmaking on the Ninth Circuit Court of Appeals.

Now, how have all these experiences prepared you for service on this very prestigious Circuit Court of Appeals?

STATEMENT OF MILAN D. SMITH, JR., NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Mr. SMITH. Thank you for that question, Senator. I think that my brother Gordon referred to the Book of Kings and others of other faiths would refer to other books. Those who have no particular religious faith would refer to other books of wisdom. And from the beginning of time, I think people have respected experience that is gained from years of dealing with people, years of dealing with issues, and wisdom sometimes comes with a little bit of gray hair and certainly dealing with people and the complex issues that confront human beings.

I believe that being the father now of seven wonderful children, having practiced law for 37 years and dealing with a wide variety of issues, will enable me, if confirmed, to bring a lot of what I guess my Grandmother Udall would call "common sense" to the decisions that are brought before me. People all have aspirations. Every human being wants what is good for his or her children, his or her business, his or her country. And if confirmed, it would be my goal, frankly, to do in the Ninth Circuit Court of Appeals what I believe my brother has done in the Senate, which is to get to know individuals personally, become their friend, and whether you always agree with them is not necessarily the point but, rather, that you can disagree without being disagreeable. And I think that that comity among your colleagues can help bring a result that is more fair, more balanced, more appreciated by the lower courts, by the public, and others who must understand and implement the policies—not policies, but the rulings that the court issues.

So I would hope that that combined experience could help to bring about such a result.

Senator HATCH. Well, thank you. Why don't you take some time to introduce your family and friends to us who are here.

Mr. SMITH. Thank you, Senator. I'd really love to do that. Let me start, if I may, by introducing my wonderful, beautiful, talented, brilliant wife and law partner, Kathleen Crane, who is directly in back of me.

Senator HATCH. That may be the best description he is ever going to give of you. Once he becomes a judge, they become very arrogant.

[Laughter.]

Senator HATCH. It is an honor to have you here.

Mr. SMITH. Then I will just start in order of birth: my daughter Tiffany of Utah—Sandy, Utah.

Senator HATCH. She is in law school now herself, isn't she? And you are the mother of how many?

Ms. SMITH. Three.

Senator HATCH. Three. And you are what year of law school?

Ms. SMITH. I am 2L, just finishing. In the middle of finals.

[Laughter.]

Senator HATCH. You shouldn't have come.

Ms. SMITH. This is more important. I will learn criminal procedure tomorrow.

Mr. SMITH. My daughter Courtney Smith, who is from New York City, is directly in back.

Senator HATCH. Good to have you here, Courtney.

Mr. SMITH. My daughter Amanda, who is from Beverly Hills, California, who is a new mother, about a year ago.

Senator HATCH. That is great.

Mr. SMITH. My daughter Elizabeth, who is from Brentwood, California.

Senator HATCH. Elizabeth.

Mr. SMITH. My daughter Brittany Brown, who is presently from Boston College, in the city of Boston right now. And if it is all right, we have a number of friends who have traveled as well. May I introduce them, Mr. Chairman?

Senator HATCH. Sure. We would love to have you do that.

Mr. SMITH. Please. Our friends Earl and Melanie Boyd, who are directly back of us there.

Senator HATCH. Welcome. We are happy to have you here.

Mr. SMITH. Jack and Linda Cross, who are here from California.

Senator HATCH. Welcome.

Mr. SMITH. Kay Tabarrah, who lives in D.C. now but used to live in California.

Senator HATCH. Kay.

Mr. SMITH. And Carol Raymondo, who is from Cayucos, California, near Morro Bay.

Senator HATCH. Carol.

Mr. SMITH. And who is here on some business, and I think I got everybody—oh, Suzette. I apologize, Suzette. My favorite niece, Suzette Jones, who is from Sarasota, Florida, and who is—we are just delighted that she is here. She's a wonderful member of our family as well.

So thank you for letting me introduce them. They are the most precious thing in my life.

Senator HATCH. I can tell that, and they are wonderful people.

[The biographical information of Milan Smith follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Milan Dale Smith, Jr.

2. **Address: List current place of residence and office address(es).**

Home: Manhattan Beach, California.

Office: Suite 500
21515 Hawthorne Blvd.
Torrance, California 90503.

3. **Date and place of birth.**

May 19, 1942. Pendleton, Oregon.

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

I am married to Kathleen Denise Crane. My wife is an attorney-at-law and is a partner at Smith Crane Robinson & Parker LLP
Suite 500
21515 Hawthorne Blvd.
Torrance, California 90503

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

Brigham Young University. Attended September 1960 through June 1961 and from February 1964 through June 1966. I received a Bachelor of Arts degree *cum laude* in June of 1966.

University of Chicago Law School. Attended September of 1966 through June 1969. I received a Doctor of Law (JD) degree in June of 1969.

University of California at Los Angeles. Attended evening extension courses in French and Italian from approximately September 1987 to June 1988. No degree was sought or granted.

George Washington University. Attended during summer of 1964 and took courses in basic accounting. No degree was sought or granted.

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

1972 to present. Smith Crane Robinson & Parker LLP (previously known at various times as Smith & Hilbig, Smith Hilbig & Chidsey and Peterson & Smith). Smith Crane Robinson & Parker LLP is a law firm of which I have been the Managing Partner since its inception.

1974 to present. I hold a California real estate broker's license and occasionally earn income as a sole proprietor using that license.

1994 to 2005. Deseret Trust Company of California. Member of Board of Directors.

1988 to 1991. California Fair Employment and Housing Commission – Commissioner

Approximately 1985 to 1988. Phoenix West Valley I. General partner.

Approximately 1978 to 1980. IFFF, Ltd. General partnership.

Approximately 1974 to 1996. Personal investments as a sole proprietor in improved real estate or raw land in Palos Verdes Estates, California, Compton, California and Mesa, Arizona.

Approximately 1975 to present. Co-Trustee with Wells Fargo Bank for certain Trusts established for the benefit of a Settlor's grandchildren.

1969 to 1972. O'Melveny & Myers. Los Angeles. Associate attorney.

1968-1969. Research assistant to Professor Allison Dunham of the University of Chicago Law School.

Summer 1968. Covington & Burling. Washington, D.C. Summer law clerk.

Summer 1967. Schiff Hardin Waite Dorschel & Britton. Chicago, Illinois. Summer law clerk.

Summer 1966. Smith Frozen Foods, Inc. Pendleton, Oregon. Day foreman of food processing plant.

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

I have never served in the military.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Super Lawyer 2006. This award is given by Los Angeles Magazine to the top 5% of practicing attorneys in Southern California as selected by votes of California attorneys who have practiced more than five years.

National Honor Scholarship. University of Chicago Law School. Three year full-tuition scholarship.

Hinton Moot Court Committee. University of Chicago.

Phi Kappa Phi. Brigham Young University.

Blue Key National Honor Fraternity.

Brigham Young University Senior of the Year, 1966.

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

The State Bar of California. Real Estate Section. Chairman of the Real Estate Secured Financing Subcommittee. Approximately 1982 to 1983.

Los Angeles County Bar Association. Member. Approximately 1970 to present.

J. Reuben Clark Law Society-Los Angeles Chapter. Board of Directors. Approximately 1993-95.

Criminal Justice Legal Foundation. Board of Trustees. Approximately 1995 to 2003.

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.**

None.

Please list all other organizations to which you belong.

Claremont Graduate University. School of Religion. Board of Visitors.

Claremont Graduate University. School of Religion. Council for Mormon Studies.

Fraternity of Friends of the Los Angeles Music Center.

The Los Angeles Country Club.

The Church of Jesus Christ of Latter-day Saints.

Mormon History Association.

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

The State Bar of California. January 15, 1970.

District of Columbia Bar. August 28, 1972. On inactive status (voluntary).

United States District Court for the Central District of California. January 15, 1970.

United States District Court for the District of Columbia. August 28, 1972.

United States Supreme Court. February 22, 1977.

United States Tax Court. October 2, 1978.

My membership in the bars of the referenced courts has not lapsed at any time. The bars of the United States District Court for the Central District of California, the United States Supreme Court and the United States Tax Court do not require members to pay dues.

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

- (a) I co-authored 43 published opinions of the California Fair Employment and Housing Commission, all of which are listed below.

[Note: All cited F.E.H.C. cases can be found on Westlaw at the citation noted.]

1. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Sigma Circuits, Inc.: Charles Dimick, Individually and as Managing Agent, Respondents v. Linda Joyce Schultz, Complainant.* 1991 WL 370096 (Cal.F.E.H.C.).

2. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Matthews Metal Products, Inc., Respondent Jennie Marie Acosta and*

Rose Arias, Complainants. 1991 WL 370093 (Cal.F.E.H.C.).

3. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Hallmark Realtors, Robert Dinkins and Charles Thomas, Respondents Richard Esqueda and Sylvia Esqueda, Complainants.* 1991 WL 11000970 (Cal.F.E.H.C.).

4. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Bart Sullivan, Owner and Manager, aka Jim L. Currie, Respondent Clema Suzanne Mendoza, Ben Mendoza; and Clema Suzanne Mendoza As Guardian Ad Litem for Amber, Dylan, Torrey And Chase Mendoza, Complainants.* 1991 WL 370082 (Cal.F.E.H.C.).

5. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Hi-Hat Sheetmetal and Peter Edmund, Respondents Selamawit P. Asfada, Complainant.* 1991 WL 370081 (Cal.F.E.H.C.) (includes Concurring Opinion by Nominee).

6. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Bart Sullivan, Owner and Manager, aka Jim L. Currie, Respondent. Clema Suzanne Mendoza, Ben Mendoza; and Clema Suzanne Mendoza as Guardian Ad Litem for Amber, Dylan, Torrey and Chase Mendoza, Complainant.* 1990 WL 312876 (Cal.F.E.H.C.).

7. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Right Way Homes, Inc. aka Homefinders; Jerry Wilkerson, as an Individual and Managing Agent, Respondents. Regana McKinney and Margaret D. Martin, Complainants.* 1990 WL 312877 (Cal.F.E.H.C.).

8. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. San Joaquin Answering Service, Inc. and WalterC Clark as Managing Agent and Individually, Respondents. Susan Coakley, Complainant.* 1990 WL 312879 (Cal.F.E.H.C.).

9. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Lunsford Mazda, Respondent. Leroy Russell, Jr., Complainant.* 1990 WL 312880 (Cal.F.E.H.C.).

10. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. James Pierik, Owner and Laurie Pierik, Owner, Respondents. Marvin Collins, Cynthia Collins, and Cynthia Collins as Guardian Ad Litem for Quiauna and Xavier Collins, Minors, Complainants.* 1990 WL 312881 (Cal.F.E.H.C.).

11. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Church's Fried Chicken, Inc., Respondent. John Clarence Jackson, Jr.,*

Complainant. 1990 WL 312878 (Cal.F.E.H.C.).

12. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Livermore Joe's, Inc., George Karkazis, Jim Karkazis, and John Karkazis, Respondents. Joelan M. Diephuis, Millie Thompson, Stacie Connrad and Traci Ann Black, Complainants*. 1990 WL 312875 (Cal.F.E.H.C.).

13. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Dimino & Card, Respondent. Valerie Rae Green, Complainant*. 1990 WL 312869 (Cal.F.E.H.C.).

14. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Villazar De La Cruz, Inc., dba Ricky's Grill, Ricardo De La Cruz, Individually and as a Managing Agent and Tina De La Cruz, Individually, Respondents. Tamera Darlene Hewlett-Vallejo, Complainant*. 1990 WL 312870 (Cal.F.E.H.C.).

15. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. General Dynamics, Inc., Data Systems Division, Respondent. Albert B. McCowen, Complainant*. 1990 WL 312873 (Cal.F.E.H.C.).

16. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Madera County; Madera County Civil Service Commission; Madera County Assessor Richard Gordon; and Lawrence (Jerry) Marsh, Respondents. Carolly Cristin Hauksdottir, Complainant-Intervenor*. 1990 WL 312871 (Cal.F.E.H.C.).

17. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Trans World Airlines, Inc., Respondent. Ralph Rodriguez, Complainant*. 1990 WL 312872 (Cal.F.E.H.C.).

18. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Madera County; Madera County Civil Service Commission; Madera County Assessor Richard Gordon; and Lawrence (Jerry) Marsh, Respondents. Carolly Cristin Hauksdottir, Complainant-Intervenor*. 1990 WL 312868 (Cal.F.E.H.C.).

19. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Rockwell International Corporation, Respondent. Beulah Darlene Dexter, Complainant*. 1989 WL 260144 (Cal.F.E.H.C.).

20. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. The HMB Group dba Mandarin Gate and Simon's; Shin Yuen Ltd. dba L'Auberge Mandarin; Simon N. Hsu; and Jonathan N. Hsu, Respondents. Kim Billington, Complainant*. 1989 WL 260143 (Cal.F.E.H.C.).

21. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Jack's Restaurant and Jack Schat, Owner, Respondent. Darilynn Johnson, Complainant.* 1989 WL 260140 (Cal.F.E.H.C.).
22. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Associated Aviation Underwriters, Respondent. Claude J. Wilson, Complainant.* 1989 WL 260141 (Cal.F.E.H.C.).
23. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Evelyn Smith, Respondent. Kenneth C. Phillips and Gail Randall, Complainants.* 1989 WL 260138 (Cal.F.E.H.C.).
24. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. John Donahue and Agnes Donahue, Respondents. Verna Terry and Robert Wilder, Complainants.* 1989 WL 260139 (Cal.F.E.H.C.).
25. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. County of San Diego Sheriff's Department, Respondent. Walter Grace, Complainant.* 1989 WL 260134 (Cal.F.E.H.C.).
26. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Firestone Tire and Rubber Company, Respondent. Lindsey Lindberg Jiles, Complainant.* 1989 WL 260135 (Cal.F.E.H.C.).
27. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Hacienda de Camarillo Apartments; Bibo, Inc.; Casa Para Senores y Senoras; Pepper Farms, Ltd.; Ripley, Ltd.; Casa de Dons y Damas; Glenwood "G," Ltd.; Glenwood Villa, Ltd.; Villa de Acapulco, Ltd.; Villa de Cordova, Ltd.; and Kathy Ulmer, Manager, Respondents. Daniel Ray Burkhardt, Theresa Dorie Burkhardt and Barbara Adair Burkhardt, Complainants.* 1989 WL 260130 (Cal.F.E.H.C.).
28. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. J.E. Robinson, D.D.S. Respondent. Josephine Grace Saul, Complainant.* 1989 WL 260136 (Cal.F.E.H.C.).
29. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Kings Entertainment Company dba Great America, Respondent. Taizoon Hatim Shakir, Complainant.* 1988 WL 242648 (Cal.F.E.H.C.).
30. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. California State University, Hayward and Robert Delemos, Individually, Respondents. Doris House, Complainant.* 1988 WL 242650 (Cal.F.E.H.C.).
31. *In the Matter of the Accusation of the Department of Fair Employment and*

Housing v. Merribrook Apartments, James C. Beard, Owner, dba Beard Development Company and Beard and Hoshaw Investment Builders; Robert J. Hoshaw, Owner, dba Beard Development Company and Beard and Hoshaw Investment Builders; Ellen Reiley, Manager; Kay Smittle, Property Manager; Beard and Hoshaw Company, Inc.; and Beard Development Company; Respondents. Morris Tolmasov, Daleen Tolmasov, and Chantel Tolmasov, a Minor, Complainants. 1988 WL 242651 (Cal.F.E.H.C.) (includes Concurring Opinion by Nominee).

32. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Hanum k. Sarkisian, Owner and Managing Agent, Respondent. Theresa Renee White, Complainant.* 1988 WL 242652 (Cal.F.E.H.C.).

33. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Hazel Flenniken, Owner, Alta Elrod, Resident Manager, Beaumont Property Management Company, Inc., Respondents. John p. Vlautin and Lisa R. Teasley, Complainants-Intervenor.* 1988 WL 242640 (Cal.F.E.H.C.).

34. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Hacienda de Camarillo Apartments; Bibo, Inc.; Casa Para Senores y Senoras; Pepper Farms, Ltd.; Ripley, Ltd.; Casa de Dons y Damas; Glenwood "G," Ltd.; Glenwood Villa, Ltd.; Villa de Acapulco, Ltd.; Villa de Cordova, Ltd.; and Kathy Ulmer, Manager, Respondents. Daniel Ray Burkhardt, Theresa Dorie Burkhardt and Barbara Adair Burkhardt, Complainants.* 1988 WL 242641 (Cal.F.E.H.C.).

35. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. United Airlines, Inc., Respondent. Gretchen Michelle Larsen, Complainant.* 1988 WL 242642 (Cal.F.E.H.C.).

36. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Los Rios Community College District, Respondent. Richard A. Blizzeard, Complainant-Intervenor.* 1988 WL 242643 (Cal.F.E.H.C.).

37. 1988 WL 242647 (Cal.F.E.H.C.). *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Sigma Circuits, Inc. and Charles Dimick, Respondents. Linda Joyce Schultz, Complainant.*

38. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Madera County; Madera County Civil Service Commission; Madera County Assessor Richard Gordon; and Lawrence (Jerry) Marsh, Respondents. Carolly Cristin Hauksdottir, Complainant-Intervenor* 1988 WL 242644 (Cal.F.E.H.C.).

39. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Compucraft Data Services dba Compucraft, Respondent. Patricia Ann Cummings, Complainant.* 1988 WL 242645 (Cal.F.E.H.C.)

40. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Dyna-Med, Inc., Respondent. Linda Olander, Complainant.* 1988 WL 242646 (Cal.F.E.H.C.).

41. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. California Polytechnic State University, Respondent. Carol Frances Bowlby, Complainant.* 1988 WL 242633 (Cal.F.E.H.C.) (includes Concurring Opinion by Nominee).

42. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. Aluminum Precision Products, Inc., Respondent. Robert Lee Wingard, Complainant.* 1988 WL 242635 (Cal.F.E.H.C.).

43. *In the Matter of the Accusation of the Department of Fair Employment and Housing v. City of Simi Valley, Respondent. James G. Goehring, Complainant.* 1988 WL 242636 (Cal.F.E.H.C.).

(b) "Federal Home Loan Bank Board Promulgates Proposed Regulations Affecting The Enforceability of "Due-on-Sale" Clauses. *California Real Property Journal*. Vol 1. No.2 (Spring 1983), pp. 16-17.

(c) "That is the Handwriting of Abraham." Notes and Comments. *Dialogue: A Journal of Mormon Thought*. Winter: 1990, pp. 167-169.

(d) Book Review. "There is no Right to Dissent in the Church." *Differing Visions*. Lanius and Thatcher. June 1996. *Sunstone*. Vol 102, pp. 66-67.

To the best of my recollection, I have never given any speeches involving constitutional law or legal policy.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

I am in good health. My last physical examination was on September 28, 2005.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

I have never been a judge.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was**

affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I have never been a judge.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

I have never held elective office nor have I ever run for public elective office.

I was appointed in 1988 by Governor George Deukmejian and confirmed by the California State Senate as a Commissioner of the California Fair Employment and Housing Commission. I served on the Commission until 1991.

I was appointed in 1982 by Governor George Deukmejian to the Los Angeles State Building Authority ("LASBA"), a joint exercise of powers authority between the State of California and the City of Los Angeles. I served as president of the LASBA until 1991 at which time I became its general counsel.

17. **Legal Career:**

- a. **Describe chronologically your law practice and experience after graduation from law school including:**

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

I did not serve as a clerk to a judge.

2. **whether you practiced alone, and if so, the addresses and dates;**

I did not practice alone.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.**

June 1969 to June 1972. O'Melveny & Myers, LLP. Associate attorney. The firm was located at 611 West 6th Street Los Angeles 90017 when I worked at the firm. It is now located at 400 South Hope Street Los Angeles, California.

June 1972 through 1973, I was a partner in the firm of Peterson & Smith located at Suite 340, 21535 Hawthorne Boulevard, Torrance, California 90503.

From 1974 through mid-year 1975, I was a partner in Smith, Hilbig & Chidsey. The firm was located at Suite 1290, 21515 Hawthorne Boulevard, Torrance, California 90503.

From mid-1975 through mid-1998, the firm was known as Smith & Hilbig. The firm was initially located at Suite 1290, 21515 Hawthorne Boulevard, Torrance, California 90503 until it moved to Suite 500 in the same building in approximately 1987.

In April 1998, the firm became known as Smith Crane Robinson & Parker LLP and continues to be located at Suite 500, 21515 Hawthorne Boulevard Torrance, California 90503.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

When I was first employed as an associate at O'Melveny & Myers, I had an opportunity to do four, six-month "rotations" in four different law specialties within the firm. I chose the litigation department, the corporate (securities) department, the real estate department and the probate department. After being at O'Melveny & Myers for approximately eighteen months, I made an early selection combining a corporate and real estate practice in which to specialize. For the remainder of my time at O'Melveny & Myers, I specialized in representing firm clients in real estate and secured lending issues, land use planning matters and business formations and structuring.

When I left O'Melveny & Myers in June of 1972 to form my own firm, I continued to specialize in complex transactional matters, but have also become a specialist in certain laws governing the operation of public schools in California. I have also handled some litigation matters at the trial and appellate levels.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Although I have spent a considerable amount of time representing large clients such as Honeywell International Inc. and the Los Angeles State Building Authority in complex real

estate and other transactions, most of my clients have been small to medium sized businesses and individuals dealing with operational, business structure and tax issues.

c. 1. Did you appear in court frequently, occasionally, or not at all?

I have appeared in court only occasionally.

2. What percentage of these appearances was in:

- (a) federal courts: 20%
- (b) state courts of record: 80%
- (c) other courts: 0%

3. What percentage of your litigation was:

- (a) civil: 100%
- (b) criminal: 0%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried six cases to verdict, three as sole counsel, one as chief counsel and two as co-counsel.

5. What percentage of these trials was:

- (a) jury: 16%
- (b) non-jury: 84%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(i) (1981). *Granger et. al. vs. Warren, Kaviani et.al.* (Orange County Superior Court Case No. 32-85-37). The trial judge was Raymond F. Vincent. Counsel for Plaintiff was Jay

W. Heckman. Mr. Heckman is deceased. Counsel for Defendant Warren was George L. Rodgers. At the time of the litigation, Mr. Rodgers's address was 17111 Beach Blvd. Suite 103 Huntington Beach, California 92647, but the State Bar of California no longer lists him as a member or deceased and I can find no current address for him. I represented the Kavianis and Roshans in an approximately seven day non-jury trial in Orange County Superior Court. A young firm associate, Rex Mitchell, joined me as second chair. Mr. Mitchell's address is 120 Mountain Canyon Place, Alamo, California 94507 and his phone number is (925) 984-6847. The case involved a claim for the specific performance of a real estate contract. We were able to defeat the plaintiff's claim for specific performance and remove a lis pendens recorded against our clients' real property.

(ii) (1983) **In re Frederick J.** (Los Angeles Superior Court. Neither Judge Levanas nor I can locate the case number or records of this old case. We believe the file was sealed because it involved a private adoption.) The trial judge was Madeleine Flier. Judge Flier is now Justice Flier who serves in Division Eight of the Second District Court of Appeal in Los Angeles. Counsel for Petitioner was Michael I. Levanas. Judge Levanas is now a Judge of the Los Angeles Superior Court and his phone number in chambers is (213) 974-5598. I successfully defended the adopting parents in a challenge to a private adoption during an approximately three-day trial in the Los Angeles Superior Court. The court determined that the best interests of the child were served by keeping the child with the adopting parents.

(iii) (1983) **Bockoff et.al. v. Rolling Hills Community Association of Rancho Palos Verdes.** (Los Angeles Superior Court Case No. C444586). The trial judge was Robert M. Mallano. Judge Mallano is now Justice Mallano who sits in Division One of the Second District Court of Appeal in Los Angeles. Counsel for Defendant was William Kinley of Mason & Kinley. Mr. Kinley is deceased. On a pro-bono publico basis, I successfully challenged the assessment procedures of the Rolling Hills Community Association during an approximately four day trial in the Los Angeles Superior Court after the Association began applying Proposition 13 valuations to member properties even though it had always previously valued those properties at "full market value." I represented the same parties in attempting to defend against a successful appeal by the Association to the Second District Court of Appeal in 2nd Civil No. B011148.

(iv) (1984) **Amberg v. Rolling Hills Community Association of Rancho Palos Verdes** (150 Cal. App. 3d 1125, 198 Cal. Rptr. 311). This is a companion case to the **Bockoff** case noted in Paragraph III but involving slightly modified causes of action and different parties. The trial judge was George Perkovich. Judge Perkovich sustained a demurrer without leave to amend which we appealed. The second district court of appeals affirmed the decision of the lower court in a published opinion. Counsel for defendant and respondent was William Kinsley who, as noted in III, is now deceased. The judges on the appeal were Justices Emerson, Stephens and Ashby.

(v) (1982) **Gunlock Corp.** TC Memo 1982-105, Code Sec(s) 1504. The trial judge was Judge Goffe. The Commissioner of Internal Revenue was represented by Charles O. Cobb. I can locate no information about Mr. Cobb in resources available to me. In this case, I

successfully represented a taxpayer corporation before the United States Tax Court in a one day trial. The issues were whether a parent corporation was allowed a deduction for a net operating loss of an affiliated corporation and whether related corporations were allowed full surtax exemptions.

(vi) (1979) **Hartford Financial Corporation v. Burns and Bernstein, et.al.** (Second District Court of Appeal 2 Civ No. 55337). The judges hearing the appeal were Justices Jefferson, Kingsley and Alarcon. Respondent was represented by Messrs. Jerome H. Sarrow and James B. Eglin. Both Messrs. Sarrow and Eglin are deceased. In this case, I (assisted by my then associate, R. Scott Robinson) represented the defendants/appellants on an appeal from an adverse trial verdict (in which the defendants were represented by other counsel) regarding an alleged conversion of assets which were the subject of a Uniform Commercial Code security interest. The court of appeals sustained the ruling of the trial court. Mr. Robinson's address is Suite 500 21515 Hawthorne Boulevard Torrance, California 90503 and his phone number is (310) 540-9111.

(vii) (1990) **In the Matter of the Estate of Belen M. Pappas** (Los Angeles Superior Court Case No. SOP 40609). The trial judge was Elsworth M. Beam. Counsel for Petitioner Sophia Bruley was Robert L. Porter. Mr. Porter's address is 6212 Greenbrier Drive, Huntington Beach, California 92648. His phone number is (714) 960-6810. In this case, I represented a proposed conservatee in a three day jury trial in the Los Angeles Superior Court. The case was settled in open court about two days after the jury was impaneled.

(viii) (1985) **In re Casa Romantica by the Sea, J.V.** (58 B.R. 554. C.D. California, 1985). The trial judge was David Kenyon, U. S. District Judge. I was co-counsel in this case for a lessee debtor who filed Chapter 11. The debtor sought to introduce extrinsic evidence to show it had an ownership interest in certain real property but the judge held that the contract was fully integrated and unambiguous and that the plaintiff (Casa) had no further interest in the property. Lead counsel for the debtor/plaintiff were Robert Greenfield and Bruce Bennett of Stutman Treister & Glatt. Mr. Greenfield's current address is Stutman Treister & Glatt 1901 Avenue of the Stars Los Angeles, California 90067-6001 and his phone number is (310) 228-5630. Mr. Bennett's current address is Hennigan Bennett & Dorman 865 S. Figueroa Street 29th Floor Los Angeles, California 90017 and his phone number is (213) 694-1200. Counsels for the debtor were Messrs. Keith Williams and Bernard J. Hittner. Mr. Williams address is 7308 Webster Street Highland, California 92346-3866 and his phone number is (909) 862-8233. Mr. Hittner's address is 245 Fischer Ave. Suite 1 Costa Mesa, California 92626-4553 and his phone number is (714) 241-1661.

(ix) (2003) **Allen v. Hansen**. No. B161200 (Cal. Ct. App. 2nd Dist June 19, 2003). This case was heard by Justices Ortega, Spencer and Vogel. Our firm represents Angeles Welding & Mfg. Co. as its corporate counsel. The current owner of the company engaged in acrimonious litigation with her brothers about the implementation of a settlement agreement that was negotiated for her by another law firm. Part of that settlement agreement involved a long-term lease of certain real property. The Hansen side contended that the settlement agreement did not contain enough information to constitute a lease under California law

whereas Allen claimed it did. Angeles hired Messrs. Robert A. Olson and Jens B. Koepke of Grier Martin Stein & Richland, appellate specialists, to defend the judgment based upon the settlement agreement. Messrs. Olson and Koepke prepared the brief and argued the case. I am listed on the briefs because I helped proof the briefs and provided input on certain real property aspects of the case. Messrs. Olson and Koepke are located at 5700 Wilshire Blvd. Suite 375 Los Angeles, California 90036 and their phone number is (310) 859-7811. Counsels for the plaintiffs/petitioners were Messrs. Ken Nathanson and Richard Lloyd Sherman, whose address is 9454 Wilshire Blvd. Suite 820 Beverly Hills, California 90212 and whose phone number is (310) 246-0321.

(x) (2002) **Palos Verdes Peninsula Unified School District v. The Institute for Bilingual Education dba International Bilingual School** (Los Angeles Superior Court Case No. SB02Z00897). The trial judge was Deane S. Myers. I argued certain pre-trial motions on behalf of the School District and sat as second chair for my law partner, Jeffrey L. Parker. Mr. Parker's address is Suite 500 21515 Hawthorne Boulevard Torrance, California 90503 and his phone number is (310) 540-9111. Opposing counsel was Paul S. Marks of Holland & Knight LLP 633 W. Fifth Street 21st Floor Los Angeles, California 90071-2040. Mr. Mark's phone number is (213) 896-2400. This was a jury trial on the issue of whether the defendant had forfeited its option to extend the term of its lease. The defendant prevailed in a three-day trial.

19. **Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

(a) I served as a Commissioner and Vice Chairman on the California Fair Employment & Housing Commission for approximately four years. During my service on the Commission, I helped draft opinions of the Commission, participated in public hearings and helped sheppard legislation of interest to the Commission through the California legislature. The Commission is charged with the enforcement and interpretation of California laws prohibiting unlawful discrimination in employment, housing, public accommodations and public services. It provides appellate review of the decisions of administrative law judges concerning the laws it enforces. The Commission also promulgates regulations concerning the implementation of various civil rights and employment laws in California

(b) I have served since approximately 1991 as General Counsel of the Los Angeles State Building Authority. In that capacity, I have performed a number of complicated legal tasks, such as (i) negotiating and documenting the acquisition of the abandoned, historic original Broadway Department Store building at 4th and Broadway in Los Angeles from a bankrupt estate, (ii) getting the County of Los Angeles and the Redevelopment Agency of the City of Los Angeles to forgive several millions of dollars of property taxes on the building, (iii) working with Los Angeles Conservancy and state agencies to insure that the façade of the building would be restored to its original appearance but for use as a state office building,

and (iv) helping obtain FEMA funds earmarked for a former state building damaged by an earthquake for use in renovating the referenced historic structure.

(c) I represented the Palos Verdes Peninsula Unified School District in obtaining \$1,470,000 in funds from a Los Angeles County Bond issue in exchange for a unique movable view easement over an historic property owned by the District. I also represented the District in negotiating and drafting a long-term ground lease of some District property used as part of the Ocean Trails golf course. Unfortunately, the developer ultimately filed bankruptcy. Donald Trump's organization eventually acquired the course out of bankruptcy and I engaged in extended negotiations with him and his staff to protect the interests of the District. I participated in settlement negotiations and the preparation of documentation that will ultimately yield the District \$5,000,000 instead of the \$2,000,000 offered by Mr. Trump.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

Should I be confirmed, I anticipate being paid in full within a few months of taking office all fees to which I am entitled from my current law firm and there will be no residual amounts due. The benefits to which I am entitled pursuant to the firm's defined benefit plan will be distributed to an IRA or other similar account and will no longer be tied to the firm. I am not presently on any boards of directors that pay directors' fees and I will resign from any boards that involve fund-raising activities. If confirmed, I shall resign as co-trustee of the Trusts. Except as noted, I do not anticipate receiving any deferred income arrangements, stock, options, uncompleted contracts and other future benefits which I expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

Should I be confirmed, during my initial service I will be particularly aware of any cases involving former clients or former partners that may come before the Ninth Circuit. I will also establish procedures to watch for potential conflicts involving my financial holdings or parties appearing before the Court. In all circumstances, I will fully comply with the requirements of the Code of Conduct for United States Judges and other applicable statutes and rules governing actual or perceived conflicts of interest.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

I have no current plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

See attached copy of Financial Disclosure Report.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached Financial Statement (Net Worth).

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

In 1972, I served as the California Ballot Security Chairman for the California Committee for the Re-election of the President. The candidate was President Richard M. Nixon. My responsibility was to secure the pro-bono services of a number of attorneys who were willing to be available at polling places on Election Day to answer election law questions from Republican poll workers.

AO-10 Rev. 1/2004		FINANCIAL DISCLOSURE REPORT NOMINATION FILING		Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)
1. Person Reporting (Last name, First name, Middle initial) Smith, Jr., Milan D		2. Court or Organization Ninth Circuit		3. Date of Report 2/15/2006
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge-Nominee		5. ReportType (check appropriate type) <input checked="" type="radio"/> Nomination, Date 2/14/2006 <input type="radio"/> Initial <input type="radio"/> Annual <input type="radio"/> Final		6. Reporting Period 1/1/2005 to 2/15/2006
7. Chambers or Office Address Suite 500 21515 Hawthorne Blvd Torrance, CA 90503		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.				

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ **NONE** - (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Managing Partner	Smith Crane Robinson & Parker LLP
2. Sole Proprietor	Milan Smith Real Estate Broker
3. Chairman-Board of Visitors	Claremont Graduate University-School of Religion
4. Director	Deseret Trust Company of California
5. Board of Advisors	Fraternity of Friends of the Music Center of Los Angeles County
6. Co-Trustee with Wells Fargo Bank	Trust 1
7. Member of LDS Council	Claremont Graduate University-School of Religion

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ **NONE** - (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 1998	Smith Crane Robinson & Parker LLP. Provides for distributions of cash or assets upon dissolution of partnership based upon percentage interest in partnership.
2. 2005	Smith Crane Robinson & Parker LLP Defined Benefit Plan. If filer is confirmed, plan will be dissolved and his share transferred to appropriate distributee.

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Smith, Jr., Milan D

Date of Report
2/15/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)**A. Filer's Non-Investment Income**

☐ **NONE** - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2004	Smith Crane Robinson & Parker LLP-Income from law firm	\$353,738
2.	2005	Smith Crane Robinson & Parker LLP-Income from law firm	\$374,767
3.	2006	Smith Crane Robinson & Parker LLP-Income from law firm	\$46,846
4.	2004	Income from service as Trustee for Trust 1	\$5,661
5.	2005	Income from service as Trustee for Trust 1	\$2198
6.	2006	Income from service as Trustee for Trust 1	\$211
7.	2004	Directors Fee-Deseret Trust Company of California	\$600

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

☐ **NONE** - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.	2005	Smith Crane Robinson & Parker LLP-Income from law firm
2.	2006	Smith Crane Robinson & Parker LLP-Income from law firm
3.		

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ **NONE** - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	EXEMPT	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Smith, Jr., Milan D	Date of Report 2/15/2006
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V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ **NONE** - (No such reportable gifts.)

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. EXEMPT		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☒ **NONE** - (No reportable liabilities.)

<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.		

FINANCIAL DISCLOSURE REPORT**Page 1 of 9**

Name of Person Reporting

Smith, Jr., Milan D

Date of Report

2/15/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Amount Code 1 (A-H)	Type (e.g. div. rent or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-F)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1. Smith Crane Robinson & Parker LLP Defined Benefit Pen Plan	F	Interest	O	T	EXEMPT				
2. Duke Energy Corp	A	Dividend	J	T					
3. Alltel Corp (Del)	A	Dividend	K	T					
4. American Intl Group, Inc.	A	Dividend							
5. Cendant Corp	A	Dividend							
6. Chevron Corp	B	Dividend	K	T					
7. General Electric Co.	A	Dividend	K	T					
8. Johnson & Johnson	A	Dividend	K	T					
9. JP Morgan Chase & Co.	A	Dividend							
10. Kimberly Clark Corp	A	Dividend	K	T					
11. Microsoft Corporation	D	Dividend	L	T					
12. Neenah Paper Inc.	A	Distribution							
13. Pfizer Incorporated	A	Dividend							
14. Blackrock CA Ins Muni 2008	A	Dividend							
15. VK Muni Inc Trust-Com	A	Dividend							
16. Coca-Cola Company	A	Dividend	K	T					
17. Tamarack Prime MM	D	Dividend	M	T					

1. Income/Gain Codes:	A = \$1,000 or less	B = \$1,001-\$2,500	C = \$2,501-\$5,000	D = \$5,001-\$15,000	E = \$15,001-\$50,000
(See Columns B1 and D4)	F = \$50,001-\$100,000	G = \$100,001-\$1,000,000	H1 = \$1,000,001-\$5,000,000	H2 = More than \$5,000,000	
2. Value Codes:	J = \$15,000 or less	K = \$15,001-\$50,000	L = \$50,001-\$100,000	M = \$100,001-\$250,000	
(See Columns C1 and D3)	N = \$250,000-\$500,000	O = \$500,001-\$1,000,000	P1 = \$1,000,001-\$5,000,000	P2 = \$5,000,001-\$25,000,000	
	P3 = \$25,000,001-\$50,000,000		P4 = More than \$50,000,000		
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT

Page 2 of 9

Name of Person Reporting

Smith, Jr., Milan D

Date of Report

2/15/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Amount Code 1 (A-H)	Type (e.g. div. rent. or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g. buy, sell, merger, redemption)	(2) Date: Month- Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. Federated Automated XXXX Cash Mgmt Trust-SS	A	Dividend	J	T	EXEMPT				
19. Harrahs Entertainment Inc.	A	Dividend	K	T					
20. Intuitive Surgical Inc.		None	K	T					
21. McCormick and Schmicks Seafood Restaurants Inc.		None	K	T					
22. Somanetics Corp New		None	J	T					
23. Tribune Company New	A	Dividend							
24. Franklin Multi Income Trust	A	Dividend							
25. Putnam High Income Bond Fund		None							
26. Kinder Morgan Energy Partners LP Unit Ltd Partnership	A	Distribution							
27. American Tower Corp CL A		None	K	T					
28. Allstate Corp	A	Dividend	K	T					
29. Constellation Brands, Inc CL A		None	K	T					
30. Constellation Energy Group	A	Dividend	K	T					
31. Dell Inc.		None	K	T					
32. Devon Energy Corp New	A	Dividend	K	T					
33. Dow Chemical Company	B	Dividend	K	T					
34. Fortune Brands Inc.	A	Dividend	K	T					
35. General Motors Corp	A	Dividend							

1. Income/Cash Codes	A = \$1,000 or less	B = \$1,001-\$2,500	C = \$2,501-\$5,000	D = \$5,001-\$15,000	E = \$15,001-\$50,000
2. Value Codes:	F = \$50,001-\$100,000	G = \$100,001-\$500,000	H1 = \$1,000,001-\$5,000,000	H2 = More than \$5,000,000	
(See Columns C1 and D3)	J = \$15,000 or less	K = \$15,001-\$100,000	L = \$50,001-\$100,000	M = \$100,001-\$250,000	
	N = \$250,000-\$500,000	O = \$500,001-\$1,000,000	P1 = \$1,000,001-\$5,000,000	P2 = \$5,000,001-\$25,000,000	
	P3 = \$25,000,001-\$50,000,000		P4 = \$More than \$50,000,000		
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT

Page 3 of 9

Name of Person Reporting
Smith, Jr., Milan DDate of Report
2/15/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merges, redemption)	If not exempt from disclosure			
						(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A- H)	(5) Identity of buyer/seller (if private transaction)
36. Goldman Sachs Group Inc.	A	Dividend	K	T	EXEMPT				
37. Intl Game Technology	A	Dividend	K	T					
38. L 3 Communications Corp	A	Dividend	K	T					
39. PepsiCo Incorporated	A	Dividend	K	T					
40. Public Svc Enterprises Group Inc.	A	Dividend							
41. Sempna Energy	A	Dividend	K	T					
42. Time Warner Inc.	A	Dividend	K	T					
43. Whole Foods Mkt Inc.	A	Dividend	K	T					
44. BP PLC Spens Adr	A	Dividend							
45. Canadian Natl Ry Co.	A	Dividend	K	T					
46. Koninklijke Philips Electrs NV (New)	A	Dividend	K	T					
47. Morgan Stanley Emerg Mkts Fd Inc.	A	Dividend							
48. Nabors Industries Ltd.		None	K	T					
49. Teco Energy Inc.	B	Dividend	K	T					
50. Boeing Co	A	Dividend	K	T					
51. Disney Walt Co Disney Com	A	Dividend	J	T					
52. Intel Corp	A	Dividend							
53. Mellon Finl Corp (PA)	A	Dividend	J	T					

1. Income/Gain Codes:	A = \$1,000 or less	B = \$1,001-\$2,500	C = \$2,501-\$5,000	D = \$5,001-\$15,000	E = \$15,001-\$50,000
(See Columns B1 and D4)	F = \$50,001-\$100,000	G = \$100,001-\$1,000,000	H1 = \$1,000,001-\$5,000,000	H2 = More than \$5,000,000	
2. Value Codes:	J = \$15,000 or less	K = \$15,001-\$50,000	L = \$50,001-\$100,000	M = \$100,001-\$250,000	
(See Columns C1 and D3)	N = \$250,000-\$500,000	O = \$500,001-\$1,000,000	P1 = \$1,000,001-\$5,000,000	P2 = \$5,000,001-\$25,000,000	
	P3 = \$25,000,001-\$50,000,000		P4 = More than \$50,000,000		
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT**Page 4 of 9**

Name of Person Reporting Smith, Jr., Milan D	Date of Report 2/15/2006
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions.)

A. Description of Assets (including trust assets) Place "CX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Amount Code 1 (A-J)	Type (e.g. div. rent or int.)	Value Code 2 (J-F)	Value Method Code 3 (Q-W)	Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-F)	(4) Gain Code 1 (A- J)	(5) Identity of buyer/seller (if private transaction)
54. Viacom Inc CL A	A	Dividend	J	T	EXEMPT				
55. Templeton Growth-A	B	Dividend	K	T					
56. Fidelity Adv Muni Inc-T	A	Dividend							
57. Mojave Water Ag Imp Dist CA Go B/E FGIC-5.300 9/1/06	A	Interest							
58. Los Angeles CNTY CA Pension Ob 6.770 6/30/05	B	Interest							
59. Stockton CA Pub Fing Rev Ref West Eight Str FSA CFN: 3.000	A	Interest							
60. First Colony Life Policy		None	J	T					
61. Aetna Life Policy		None	K	T					
62. McDonalds Corp	A	Dividend	J	T					
63. Sprint Nextel Corp	A	Dividend	J	T					
64. California Pizza Kitchen		None	J	T					
65. Quanta SVCS Inc		None	J	T					
66. CBS Corp C1 A	A	Dividend							
67. Encana Corp	A	Dividend	K	T					
68. Petrochina Company Ltd Adr Shs Ser H	A	Dividend	J	T					
69. Franklin Ltd Mat US Govt Sec A	C	Interest	M	T					
70. Ishares Tr Us Treas Infl Protection Secs FD	B	Interest							
71. AIM Short Term Bd C1 C	C	Interest							

1. Income/Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001-\$100,000	B = \$1,001-\$2,500 G = \$100,001-\$1,000,000	C = \$2,501-\$5,000 H1 = \$1,000,001-\$3,000,000	D = \$5,001-\$15,000 H2 = More than \$5,000,000	E = \$15,001-\$50,000
2. Value Codes: (See Columns C1 and D3)	J = \$15,000 or less N = \$250,000-\$500,000 P3 = \$25,000,001-\$50,000,000	K = \$15,001-\$50,000 O = \$500,001-\$1,000,000	L = \$50,001-\$100,000 P1 = \$1,000,001-\$5,000,000 P4 = \$5,000,001-\$10,000,000	M = \$100,001-\$250,000 P2 = \$5,000,001-\$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash/Market	

FINANCIAL DISCLOSURE REPORT**Page 5 of 9**

Name of Person Reporting

Smith, Jr., Milan D

Date of Report

2/15/2006

VII. INVESTMENTS and TRUSTS

— income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "QC" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A- H)	(5) Identity of buyer/seller (if private transaction)
72. Ameritech Cap Fdg Corp 6.150 1/15/08	A	Interest			EXEMPT				
73. CIT Group Inc 4.300 2/15/07	A	Interest							
74. CNA Financial Corp 6.6000 12/15/08	A	Interest							
75. Commercial Credit 6.625 11/15/06	A	Interest							
76. Credit Suisse FB USA Inc. 5.750 4/15/07	A	Interest							
77. DaimlerChrysler NA Hldg 7.200 9/1/09	A	Interest							
78. Dow Chemical Company 5.750 12/15/12	A	Interest							
79. Dow Chemical Company 5.3000 3/15/13	A	Interest							
80. First Chicago NBD Corp 6.125 2/15/06	A	Interest							
81. Franklin Universal Trust	C	Interest	J	T					
82. General Electric Cap Corp 8.125 5/15/12	A	Interest							
83. General Electric Cap Corp 4.000 4/15/10	A	Interest							
84. Goldman Sachs 5.250 10/15/13	A	Interest							
85. Hartford Life 4.500 6/15/12	A	Interest							
86. Household Fin Corp 5.000 11/15/07	A	Interest	J	T					
87. Household Fin Corp 5.875 2/1/09	A	Interest							
88. Intermediate Bond Fund America	A	Interest							
89. Intl Lease Fin Corp 4.375 11/1/09	A	Interest							

1. Income/Gain Codes:	A = \$1,000 or less	B = \$1,001-\$2,500	C = \$2,501-\$5,000	D = \$5,001-\$15,000	E = \$15,001-\$50,000
(See Columns B1 and D4)	F = \$50,001-\$100,000	G = \$100,001-\$1,000,000	H1 = \$1,000,001-\$5,000,000	H2 = More than \$5,000,000	
2. Value Codes:	J = \$15,000 or less	K = \$15,001-\$50,000	L = \$50,001-\$100,000	M = \$100,001-\$250,000	
(See Columns C1 and D3)	N = \$250,000-\$500,000	O = \$500,001-\$1,000,000	P1 = \$1,000,001-\$5,000,000	P2 = \$5,000,001-\$25,000,000	
	P3 = \$25,000,001-\$50,000,000		P4 = More than \$50,000,000		
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT**Page 6 of 9**

Name of Person Reporting

Smith, Jr., Milan D

Date of Report

2/15/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Amount Code 1 (A-H)	Type (e.g. div. rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A- H)	(5) Identity of buyer/seller (if private transaction)
90. Int'l Lease Fin Corp 4.200 2/15/10	A	Interest			EXEMPT				
91. John Hancock Life Ins Co 4.150 2/15/12	A	Interest							
92. La Salle Fndg LLC Multi 3.000 1/15/11	A	Interest							
93. McDonald's Corp 6.900 4/15/11	A	Interest							
94. MFS Charter Income Trust	B	Interest							
95. MFS Govt Markets Income	B	Interest							
96. MFS Intermediate Income Trust	B	Interest							
97. Motorola Inc. 7.625 11/15/10	A	Interest							
98. National Rural Utilities 4.125 2/15/11	A	Interest							
99. New York Tel Co. 7.000 6/15/13	A	Interest							
100. Pitney Bowes Inc 5.875 5/1/06	A	Interest							
101. Putnam Master Intrmd Income Tr	B	Interest							
102. Solomon Bros Var Rate Strategic Fund	B	Interest							
103. TRW Inc.	A	Interest							
104. Van Kampen Income Tr Shs Ben Int	C	Interest							
105. Ford Motor Credit Co 7.875 6/15/10	A	Interest							
106. Ford Motor Credit Co 7.250 10/25/11	A	Interest							
107. Ford Motor Credit Co 5.625 10/1/08	A	Interest							

1. Income/Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001-\$100,000	B = \$1,001-\$2,500 G = \$100,001-\$1,000,000	C = \$2,501-\$5,000 H1 = \$1,000,001-\$5,000,000	D = \$5,001-\$15,000 H2 = More than \$5,000,000	E = \$15,001-\$50,000
2. Value Codes: (See Columns C1 and D3)	J = \$15,000 or less N = \$250,000-\$500,000 P3 = \$250,000,001-\$50,000,000	K = \$15,001-\$50,000 O = \$500,001-\$1,000,000	L = \$50,001-\$100,000 P1 = \$1,000,001-\$5,000,000 P4 = \$5,000,001-\$50,000,000	M = \$100,001-\$250,000 P2 = \$250,001-\$250,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash/Market	

FINANCIAL DISCLOSURE REPORT**Page 7 of 9**

Name of Person Reporting Smith, Jr., Milan D	Date of Report 2/15/2006
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Amount Code 1 (A-H)	Type (e.g. div. rent. or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A- H)	(5) Identity of buyer/seller (if private transaction)
108. General Motors Acop Corp 6.125 11/15/08	A	Interest	J	T	EXEMPT				
109. General Motors Acop Corp 5.750 9/15/06	A	Interest	J	T					
110. General Motors Acop Corp 5.400 2/15/09	A	Interest							
111. General Motors Acop Corp 5.625 5/15/09	A	Interest							
112. General Motors Acop Corp 5.500 7/15/07	A	Interest							
113. JC Penney & Co 6.500 12/15/07	A	Interest							
114. Teco Energy Inc 7.200 5/1/11	A	Interest							
115. Toys R Us 6.875 8/1/06	A	Interest							
116. Solomon 2008 World Term Trust	C	Interest							
117. Allegheny Cnty PA Hosp 5.400 5/1/06	B	Interest	K	T					
118. Anaheim CA Pub Fing Auth 5.000 10/1/10	A	Interest	J	T					
119. Blackrock CA Ins Muni 2008	C	Interest	L	T					
120. Blackrock Ins Muni 2008	B	Interest							
121. California St Dept 0.000 3/1/08		None	J	T					
122. California St Go 5.000 11/1/07	A	Interest							
123. California St Pub Wks		None	J	T					
124. East Bay Calif Muni Util 4.800 6/1/-8	A	Interest	J	T					
125. Fidelity Adv Muni Inc-T	B	Interest	K	T					

1. Income/Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001-\$100,000 J = \$15,000 or less (See Columns C1 and D3)	B = \$1,001-\$2,500 G = \$100,001-\$1,000,000 K = \$15,001-\$50,000 O = \$500,001-\$1,000,000 P1 = \$250,000-\$500,000 P3 = \$250,000-\$50,000,000	C = \$2,501-\$5,000 H1 = \$1,000,001-\$5,000,000 L = \$50,001-\$100,000 P1 = \$1,000,001-\$5,000,000 P4 = \$5,000,001-\$25,000,000	D = \$5,001-\$15,000 H2 = More than \$5,000,000 M = \$100,001-\$250,000 P2 = \$5,000,001-\$25,000,000	E = \$15,001-\$50,000
2. Value Codes: (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash/Market	

FINANCIAL DISCLOSURE REPORT**Page 8 of 9**Name of Person Reporting
Smith, Jr., Milan DDate of Report
2/15/2006**VII. INVESTMENTS and TRUSTS** — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-4f)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A- 4f)	(5) Identity of buyer/seller (if private transaction)
126. Las Vegas-Clark Cnty NV 2.750 6/1/07	A	Interest	J	T	EXEMPT				
127. Los Angeles Cnty Calif 6.900 6/30/08	A	Interest							
128. Mohave Water Agency 5.300 9/1/06	A	Interest	J	T					
129. Municipal Advantage FD Inc.	B	Interest	K	T					
130. Partier Calif Redevel Agy 4.650 8/1/10	A	Interest	J	T					
131. Pasadena CA Electric 5.000 8/1/09	A	Interest	J	T					
132. Putnam CA Inv Grade Muni	B	Interest							
133. Sacramento CA Mud Rev 5.250 8/15/09	A	Interest	K	T					
134. Sacramento Cnty CA Arpt 6.000 7/1/16	A	Interest	K	T					
135. Franklin Income Series A	C	Interest	K	T					
136. Enterprise Prods	B	Distribution	K	T					
137. Kinder Morgan Energy	B	Distribution	K	T					
138. Oceanside CA Cert Rdp 6.100 4/1/05	A	Interest							
139. Van Kampen Sr. Income	A	Interest							
140. Oneok Inc New	B	Dividend	K	T					
141. Active Power Inc.		None	K	T					
142. Spectranetics Corp.		None	J	T					
143. Acco Brands Corp		None	J	T					

1. Income/Unit Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001-\$100,000	B = \$1,001-\$2,500 G = \$100,001-\$1,000,000	C = \$2,501-\$5,000 H1 = \$1,000,001-\$5,000,000	D = \$5,001-\$15,000 H2 = More than \$5,000,000	E = \$15,001-\$50,000
2. Value Codes: (See Columns C1 and D3)	J = \$15,000 or less N = \$250,000-\$500,000 P3 = \$25,000,001-\$50,000,000	K = \$15,001-\$50,000 O = \$500,001-\$1,000,000	L = \$50,001-\$100,000 P1 = \$1,000,001-\$5,000,000 P4 = \$5,000,001-\$25,000,000	M = \$100,001-\$250,000 P2 = \$25,000,001-\$50,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash/Market	

FINANCIAL DISCLOSURE REPORT**Page 9 of 9**

Name of Person Reporting Smith, Jr., Milan D	Date of Report 2/15/2006
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VII. INVESTMENTS and TRUSTS — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-F)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A- H)	(5) Identity of buyer/seller (if private transaction)
144. BP PLC Spons Adr	A	Dividend	K	T	EXEMPT				
145. Mississippi St. Go 5.250 07/01/08	B	Interest	K	T					

1. Income/Gain Codes:	A = \$1,000 or less (See Columns B1 and D4)	F = \$50,001-\$100,000	B = \$1,001-\$2,500	G = \$100,001-\$1,000,000	K = \$15,001-\$50,000	O = \$500,001-\$1,000,000	C = \$2,501-\$5,000	H1 = \$1,000,001-\$5,000,000	L = \$50,001-\$100,000	P1 = \$1,000,001-\$5,000,000	P4 = \$More than \$50,000,000	D = \$5,001-\$15,000	H2 = More than \$5,000,000	M = \$100,001-\$250,000	P2 = \$5,000,001-\$25,000,000	E = \$15,001-\$50,000
2. Value Codes:	J = \$15,000 or less (See Columns C1 and D3)	N = \$250,000-\$500,000	P3 = \$25,000,001-\$50,000,000	Q = Appraisal	U = Book Value	R = Cost (Real Estate Only)	V = Other	S = Assessment	T = Cash/Market	W = Estimated						

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Smith, Jr., Milan D

Date of Report 2/15/2006

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS

(Indicate part of Report.)

PART III

III (A) (2). Smith Crane Robinson & Parker LLP income per partner is not finally determined until our tax returns are prepared. Accordingly, this figure is approximate only.

III (A) (3). Smith Crane Robinson & Parker LLP income per partner for the months of January through February 15, 2006 has not yet been determined. Accordingly, this figure is approximate only.

PART VII

Trust 1 assets are excluded since I have no control over the investment, sale or purchase of trust assets, but am limited to distributions from the Trust, according to the terms of the Trust.

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Smith, Jr., Milan D

Date of Report 2/15/2006

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature



Date 2-17-06

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		226	416	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	1	840	694	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends		28	000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		442	080
Real estate owned-add schedule	1	995	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		141	000				
Cash value-life insurance		52	967				
Other assets itemize:							
Law firm defined benefit plan		835	422				
Interest in law firm assets		100	000				
				Total liabilities		442	080
				Net Worth	4	777	419
Total Assets	5	219	499	Total liabilities and net worth	5	219	499
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	YES		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT**NET WORTH SCHEDULES****Listed Securities**

Allstate Corp.	\$37,044.00
Alltell Corp.	\$23,916.00
Boeing Co.	\$18,132.50
Chevron Corp.	\$36,796.50
Coca-Cola Company	\$20,580.00
Dell Inc.	\$44,506.00
Devon Energy Corp.	\$29,460.00
Disney Walt Co.	\$12,006.00
Dow Chemical Company	\$33,608.00
Duke Energy Corp.	\$11,304.00
General Electric Co.	\$23,296.00
Genzyme Corp.	\$40,830.00
Goldman Sachs Group, Inc.	\$28,162.00
Intel Corp.	\$12,774.00
Intuitive Surgical Inc.	\$15,477.00
Johnson & Johnson	\$35,034.00
Kimberly Clark Corp.	\$22,828.00
McDonalds Corp.	\$10,899.00
Mellon Finl Corp.	\$11,706.20
Microsoft Corporation	\$65,390.50
Pepsico Incorporated	\$28,965.00
Sprint Nextel Corp.	\$ 8,314.53
Time Warner Inc.	\$27,480.00
American Tower Corp.	\$20,325.50
Constellation Brands Inc.	\$39,465.00
Constellation Energy	\$29,260.00
Fortune Brands Inc.	\$39,045.00
Harrahs Entertainment Inc.	\$21,723.00
Intl Game Technology	\$40,524.00
L3 Communications Corp.	\$28,693.00
Oneok Inc	\$26,590.00
Sempra Energy	\$30,472.00
Teco Energy Inc.	\$33,160.00
Viacom Inc Cl A	\$ 8,590.00
Whole Foods Mkt Inc.	\$25,940.00
Active Power Inc.	\$16,760.00
California Pizza Kitchen	\$ 9,297.00
McCormicks and Schmicks Seafood Rest.	\$19,431.00
Quanta SVCS Inc.	\$13,030.00
Somanetics Corp.	\$13,638.00

Spectranetics Corp.	\$10,800.00
Acco Brands Corp.	\$ 848.40
BP PLC	\$26,952.00
Canadian Natl Ry Co.	\$31,542.00
Encana Corp.	\$27,202.50
Koninklijke Philips Electrs NV	\$32,920.00
Templeton Growth –A	\$49,174.69
Nabors Industries Ltd.	\$29,240.00
Petrochina Company Ltd.	\$ 9,649.00
Franklin Ltd Mat US Govt Sec A	\$130,356.81
Franklin Universal Trust	\$10,540.00
Household Finance Corp.	\$11,846.04
General Motors Accp Corp 6.125	\$ 8,863.90
General Motors Accp Corp 5.750	\$ 9,713.90
Allegheny Cnty Pa Hosp 5.400	\$25,113.25
Anaheim CA Pub Fing Auth 5.000	\$10,681.40
Blackrock CA Ins Muni 2008	\$96,432.00
California St Dept 0.000	\$ 9,216.90
California St. Go 5.000	\$10,268.20
California St. Pub Wks 0.000	\$14,185.05
East Bay Calif Mun Util 4.800	\$10,241.80
Fidelity Adv Muni Inc-T	\$28,084.27
Las Vegas-Clark Cnty NV 2.750	\$24,717.75
Los Angeles Cnty Calif 6.900	\$ 5,349.50
Mississippi St. Go 5.250	\$25,948.00
Mojave Water Agency 5.300	\$10,115.80
Municipal Advantage Fd Inc.	\$25,360.00
Parlier Calif Redev Agy 4.650	\$10,507.70
Pasadena CA Electric 5.000	\$10,484.20
Sacramento CA Mud Rev 5.250	\$15,953.40
Sacramento Cnty CA Arpt 6.000	\$15,459.90
Franklin Income Series –A	\$44,682.54
Enterprise Prods	\$24,730.00
Kinder Morgan Energy	<u>\$19,060.00</u>
Total Listed Securities	\$1,840,693.63

Real Estate Owned

Personal residence	\$1,995,500.00
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Real Estate Mortgages Payable

Personal residence	\$442,080.00
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Any Assets Pledged?

Personal residence	
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III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

(a) Ettie Lee Homes for Youth, Vice Chairman. I served on the Board of this entity for approximately nine years. This entity provides treatment and a home based living environment for troubled young people referred to it by the Los Angeles County court system.

(b) Interfaith Committee to Heal LA. After the Rodney King riots in 1992, Rabbi Harvey Fields sought representatives from a number of religious communities in Los Angeles to help address some of the underlying causes of the riots. I was named the Chair of the Economic Development Subcommittee and helped organize the provision of pro bono legal and other professional services to inner city churches and other organizations that could help heal the wounds suffered by the City. I served as Chairman for approximately two years and the Subcommittee met approximately monthly. I personally focused my efforts on providing pro bono work to two organizations.

(i) The first was the West Angeles Church of God in Christ on Crenshaw Boulevard in Los Angeles. Working with Bishop Charles Blake and his staff, I formed a non-profit corporation and secured 501 (c) (3) tax-exempt status for that entity. Once formed, the entity secured a number of grants from business and wealthy individuals to help provide housing and basic services primarily to economically disadvantaged African American families. I was recognized by the Church in 1995 with its Community Service Award for my efforts.

(ii) The second entity I assisted personally was Pueblo Nuevo, an Episcopal Church affiliate focused on providing jobs and housing to primarily Hispanic immigrants in the Mac Arthur Park area of Los Angeles. I advised a corporate entity formed to help the church fulfill its mission. Moreover, because I speak Spanish, I was also able to counsel a number of disadvantaged persons served by Pueblo Nuevo concerning their personal legal problems.

(c) As previously noted, I served for approximately four years on the California Fair Employment & Housing Commission. Although a small per diem allowance was paid to commissioners during hearing days, my work was essentially pro bono and took a great deal of time. Most of the persons who make claims through the administrative system are persons of modest means who cannot afford a private attorney.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I do not belong and have not belonged to any organization that invidiously discriminates based on race, sex, or religion through either formal membership requirements or the practical implementation of membership policies.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination?**

There is a selection commission in my jurisdiction for the selection of federal district judges. However, since I am seeking appointment to the Court of Appeals, I did not interact with the selection commission in my jurisdiction.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

In April of 2001, I had an interview with Judge Alberto Gonzalez, then Counsel to the President. In October of 2001, I met again with Judge Gonzalez and several members of his staff. In March of 2005, I met with White House Counsel Harriet Miers and several members of her staff. On September 22, 2005, I was notified by the White House Counsel's office that the president had approved proceeding with my background check. After undergoing a background investigation and completing nomination paperwork, I was informed that the President intended to formally submit my nomination to the Senate. My nomination was submitted to the Senate on February 14, 2006.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

During the selection process, no one has discussed with me any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how I would rule on such case, issue, or question.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial

branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this “judicial activism” have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

The basic principle underlying the United States Constitution is that “the People” are the ultimate source of political power. Thus minded, the Framers made the legislative branch, the branch thought to be most responsive to the people, the subject of the first Article of the Constitution and gave it the power to enact laws. Fearful of abuses of executive power, the Framers next provided in Article II for an elected executive some of whose powers are coordinated with and somewhat circumscribed by those of the legislative branch. Only in Article III did the Framers deal with the formation of the judiciary, a governmental branch not elected by the people, but one whose members are to be selected and approved by the elected branches of government. The judicial branch enjoys little independent authority when compared to the other two branches of government. Article III leaves to Congress the right to create lower courts, to establish judicial compensation, and even the ability to strip the federal courts of jurisdiction in certain matters. Moreover, Article III provides that judges must limit their decisions to the “cases” and “controversies” before them. However, courts were also to act as a bulwark against popular sentiment when necessary to preserve the rights guaranteed by the Constitution. Judges were granted life tenure and certain other protections in order to help them fulfill their occasionally anti-majoritarian duties.

Inevitably, from time to time, some judges may forget their limited role and seek to impose their own personal beliefs on others, often in blatant disregard of existing law and precedent. This is inappropriate conduct for an Article III judge.

In my view, judges can best fulfill their duties by carefully adhering to the following principles of jurisprudence: recognize the importance of promoting reliability and stability

within the legal system by following controlling legal precedents (*stare decisis*); make certain that each litigant has proper standing to be before the court; avoid ruling on political questions; decide only “cases” and “controversies;” avoid handing down opinions that are so broad they can be read to create new categories of rights; abstain from ruling on state law questions when controlling law permits; and make certain cases before the court are ripe for resolution.

Judges should understand that courts suffer from institutional inadequacies that render them poor law makers. For example, it is rare that all parties whose interests may be at stake are included in a case pending before a court. Moreover, the rules that are essential to the judicial process provide no mechanism for weighing the competing needs of the parties before it or a framework within which to create the political compromises that are the essence of the legislative process.

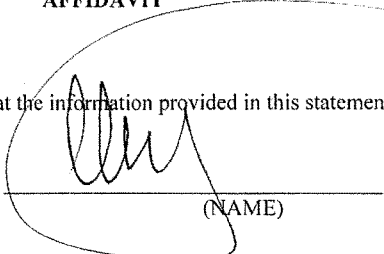
Wise judges never forget that they are not elected and that the genius of our government lies in democratic values. They must also respect the constitutionally established role of the other two branches of government and the wisdom of their judicial predecessors while still fulfilling their role to protect the constitutional rights of parties before them. Finally, prudent judges are humble and self-questioning, constantly striving to fulfill the role envisioned for them by the Constitution. If confirmed, I will strive to properly fulfill that role.

AFFIDAVIT

I, Milan Dale Smith, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2-22-06

(DATE)



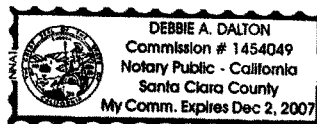
(NAME)

(NOTARY)

State of California)
) ss.
County of Los Angeles)

Subscribed and sworn to before me on this 22nd day of February, 2006, Milan Dale Smith, Jr., personally known to me proved to me on the basis of satisfactory evidence to be the person who appeared before me.


Signature



Senator HATCH. We are grateful that you are willing to serve because we know that you have a substantial career, we know that you could have a very interesting and easy life without doing this job. But this is an important job, and we are really pleased to have people of your qualifications willing to serve, and we will do everything in our power to get you through as fast as we can so you can get on that court. I know that you are still going to be very subservient to Mrs. Smith at home.

[Laughter.]

Mr. SMITH. May I also, Mr. Chairman, thank the Committee. I want to thank Chairman Specter and his wonderful staff, Ranking Member Leahy and his staff. They have shown us many courtesies, as have you. I am very, very grateful for that. I realize that there are lots of people who pass before this Committee, but I must confess I feel very, very grateful of their sensitivity and the expeditious way in which they have handled my nomination and hoped-for confirmation. So thanks to all who have been involved in this process.

Senator HATCH. Well, thank you so much, and I have to say your brother has weighed in rather heavily on your behalf.

[Laughter.]

Senator HATCH. He did not really have to.

Mr. SMITH. Well, that is very nice. Let me just conclude by saying this: Nobody ever had a better brother.

Senator HATCH. He feels exactly the same.

Mr. SMITH. We tend to get lachrymose over the dedication of a drawbridge. I am sorry about that.

[Laughter.]

Mr. SMITH. But as you probably know, Gordon and I are extraordinarily close, and he was gracious enough to say lots of nice things about me, and I cannot tell you how proud I am of him. He has been through a lot, as you know.

Senator HATCH. Yes, I know.

Mr. SMITH. But I think his courage and what he has shown to people will help lots of other people, and I know that today our parents and grandparents and others were very proud of him and a lot of us in the family because we believe in public service. We understand the importance of being there to try to do good to people and to bring the skill sets that we have for the benefit of our community and others. So I thank you for this opportunity to be here.

Senator HATCH. Well, thank you. I share your high opinion of my colleague, I will tell you. As good as it gets, and I think both sides of the floor think very highly of Gordon, as they should. But we are honored to have all of you here. We will push this nomination as fast as we can, and hopefully you will be sitting on that court within a short period of time, and that ought to be an interesting part of your life from this point on. I have no doubt you will be one of the great judges in this country.

So thank you so much. It is great to see all of you. We are proud of all of you, and we wish you the best.

Mr. SMITH. Thank you, Senator. And if it is all right, we will move out of the way so that other family members in the New Jersey contingent can move forward and be closer to their families. And thank you very much.

Senator HATCH. Good to see you.

Well, if we can have the other nominees take their places at the table, we will move ahead with them.

Let's have you all stand, and I will administer the oath. Please raised your right hands. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Ms. BUMB. I do.

Mr. HILLMAN. I do.

Mr. SHERIDAN. I do.

Judge WIGENTON. I do.

Senator HATCH. Thank you very much.

I am aware of all of your reputations. They are excellent reputations. You had two fine Senators recommend you, plus the President of the United States, and I am not going to bother you with any questions because I know that each of you is qualified, more than qualified to serve on the Federal bench. And we are very proud to have you here today.

If you want me to ask some questions, I will.

[Laughter.]

Senator HATCH. But I think sometimes these should not be ordeals. These ought to be really wonderful experiences to all of you.

What I would like you to do, however, is take time—and we can start with you, Ms. Bumb—take time and introduce members of your family and friends who are here, and we will just go across the table. Okay? You are first.

**STATEMENT OF RENEE MARIE BUMB, NOMINEE TO BE
DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY**

Ms. BUMB. Thank you, Senator. I want to first introduce my wonderful, wonderful, wonderful husband, behind me.

[Laughter.]

Senator HATCH. He is embarrassed.

Ms. BUMB. Kevin Smith.

Senator HATCH. Good to have you here.

Ms. BUMB. And my two daughters, Katrina and Elizabeth Smith.

Senator HATCH. Oh, they are beautiful. I tell you, that is just great.

Ms. BUMB. And I do want to introduce, although he is not here, our youngest, Liam Timothy, who is waiting for us in Russia, and we will be picking him up next month.

Senator HATCH. So you are adopting him then.

Ms. BUMB. Yes.

Senator HATCH. That is terrific.

Ms. BUMB. He will be 1 year old next month. And my wonderful parents, Harold and Trudy Bumb.

Senator HATCH. We are so happy to have you here. You have to be really proud of your daughter.

Mrs. Bumb. We are.

Ms. BUMB. Thank you, Senator, and thank you for the honor and privilege, to you and to the Committee, for allowing me to be here. It is an honor and privilege.

Senator HATCH. We are very proud of you.

[The biographical information of Renee Bumb follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Renée Marie Bumb

2. Address: List current place of residence and office address(es).

Current Residence: Wenonah, New Jersey

Current Office Address: United States Attorney's
Office, 401 Market Street,
Camden, New Jersey 08101

3. Date and place of birth.

January 25, 1960; Bellevue, Ohio

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Spouse: Kevin Timothy Smith

Spouse's Occupation: Assistant U.S. Attorney, United
State's Attorney's Office, Camden,
New Jersey 08101

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Rutgers School of Law - Newark (1984 - 1987); J.D. 1987

University of Chicago (1981 - 1983); M.A. 1983

Ohio State University (1978 - 1981); B.A. 1981

Leningrad State University (Summer 1981); Certificate of
Study (sponsored through Kansas State University)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

United States Attorney's Office for the District of New Jersey; December 30, 1991 to present; Assistant United States Attorney

Riker, Danzig, Scherer, Hyland & Perretti; 1991; Associate

Honorable Garrett E. Brown, Jr., United States District Court for the District of New Jersey; 1987 - 1988; Law Clerk

Willkie, Farr & Gallagher; Summer 1986; Summer Associate

Honorable John Sprizzo, United States District Court for the Southern District of New York; Summer 1985; Judicial Intern

Honorable Clarkson Fisher, United States District Court for the District of New Jersey; Summer 1985; Judicial Intern

Honorable Harold Ackerman, United States District Court for the District of New Jersey; Spring 1985; Judicial Intern

Fried, Frank, Harris, Shriver & Jacobson; 1982 - 1984; Paralegal

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Editor-in-Chief, Rutgers School of Law-Newark;

Justice Hughes Award for Rutgers School of Law - Newark;
Hillman Fund Scholarship for the University of Chicago;
Phi Beta Kappa - Ohio State University.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Gloucester County Car Bar Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None that are active in lobbying before public bodies.

St. John of God Community Services, Office of Religious Education - Advisory Board, Westville, New Jersey; Cathedral of the Immaculate Conception, Cathedral Chapter Board Member, Camden, New Jersey

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States District Court for the District of New Jersey: 1987

United States District Court for the Western District of New York: 1988

State of New Jersey: 1987

State of New York: 1988

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee.

Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Note, Settling a Case: A Court's Inherent Power to Impose Sanctions Before and After Eash v. Riggins Trucking Inc., 38 Rutgers Law Rev. 539 (1986)

The Hazardous& Solid Waste Act of 1984, N.J.L.J. (Jan. 16, 1986)

13. Health: What is the present state of your health? List the date of your last physical examination.

I am in good health. My last physical examination was in July 2005.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I have never been a judge.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or

appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Assistant United States Attorney, appointed 1991

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Upon graduation from law school, I clerked for the Honorable Garrett E. Brown, Jr., United States District Judge for the District of New Jersey, from 1987 to 1988.

2. whether you practiced alone, and if so, the addresses and dates;

No, I have never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

From 1988 to 1991, I was an associate at the law firm, Riker, Danzig, Scherer, Hyland & Perretti, One Speedwell Plaza, Morristown, New Jersey.

On December 30, 1991, I became an Assistant United States Attorney for the District of New Jersey, United States Attorney's Office, 401 Market Street, Camden, New Jersey 08101.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

As an associate at the law firm of Riker, Danzig, Scherer, Hyland & Perretti, my primary area of responsibility was bankruptcy and commercial litigation.

As an Assistant U.S. Attorney I have specialized in the area of criminal prosecutions ranging from general crimes, frauds, and public corruption. I currently serve as the Attorney-in-Charge of the Camden, New Jersey office. In that capacity I directly supervise the criminal Assistant United States Attorneys.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

As an associate at the law firm of Riker, Danzig, Scherer, Hyland & Perretti, the majority of the clients were creditors in bankruptcy proceedings, typically financial institutions and other corporate clients. I specialized in the area of bankruptcy and commercial litigation

As an Assistant United States Attorney I represent the United States in criminal prosecutions.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

As an associate at the law firm of Riker, Danzig, Scherer, Hyland & Perretti, I regularly appeared before the United States Bankruptcy Court for the District of New Jersey involving primarily creditor's rights and other related civil issues.

As an Assistant United States Attorney I have frequently appeared before the United States District Court for the District of New Jersey in criminal prosecutions.

2. What percentage of these appearances was in:
 - (a) federal courts: 90%
 - (b) state courts of record: 10%
 - © other courts:
3. What percentage of your litigation was:
 - (a) civil: 10%
 - (b) criminal: 90%
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have prosecuted over 30 criminal trials that have gone to jury verdict. For most of these I was either sole or chief counsel; in some I served as a "second chair," mentoring less experienced Assistant United States Attorneys.

5. What percentage of these trials was:
 - (a) jury; 100%
 - (b) non-jury. 0%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and

- © the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I represented the United States in the following prosecutions:

A. United States v. Michael Harkins, Criminal No. 04-16(KAJ) in the District of Delaware, a case against the former Executive Director of the Delaware River Bay Authority involving allegations of mail fraud. The investigation resulted in a guilty plea to a two count Information charging mail fraud and a tax violation. Co-counsel: Richard Andrews, First Assistant United States Attorney for the District of Delaware, 1007 Orange Street, Suite 700, Wilmington, Delaware, 19899, (302)573-6277. Defense counsel: Victor Battaglia, Esq., Biggs and Battaglia, 921 North Orange Street, Wilmington, Delaware, 19899, (302)655-7924.

B. United States v. Milton Milan, Criminal No. 00-194 (JAP) (October - December 2000), a case against the mayor of Camden, New Jersey involving corruption and fraud, before the Honorable Joel A. Pisano, United States District Court, District of New Jersey, Camden, New Jersey. Milan was found guilty of 14 out of 19 counts. Co-counsel: Assistant U.S. Attorney Mary Fitcher, United States Attorney's Office, 402 E. State Street, Trenton, NJ, 08690, (609)989-2190. Defense Counsel: Carlos Martir, Esq., 211 North 13th Street, Suite 500, Philadelphia, PA, 19107, (215)861-8443. Reported at United States v. Milan, 304 F. 3d 273 (3d Cir. 2003), cert. denied, 538 U.S. 1024 (2003). See also United States v. Sealed Search Warrants, 28 Media L. Rep. 1151 (D.N.J. 1999).

C. United States v. National Medical Care, Inc., Criminal No. 99-748(WHW) (1999), a case against National Medical Care, Inc., involving allegations of various FDA violations. The case resulted in a corporate misdemeanor plea and a \$3.8 million fine by the Honorable William H. Walls, United States District Court, District of New Jersey, Newark, New Jersey. Co-counsel: Catherine Cook, Food and Drug Administration, Rockville, MD 20857, (301)827-1115. Defense counsel: John Dowd, Esq., Akin, Gump, Strauss, Hauer & Feld, 1333 New Hampshire Avenue, N.W., Suite 400, Washington, D.C., 20036, (202)887-4386; William L.

Gardner, Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, N.W., Washington, D.C., (202)739-5180.

D. United States v. Alfred A. Porro and Joan Atkins Porro, Criminal No. 96-420(JHR), a case involving mail frauds and tax violations, and resulting in verdicts of guilty on all counts in March 1999 before the Honorable Joseph H. Rodriguez, United States District Court for the District of New Jersey, Camden, New Jersey. Co-counsel: Perry Carbone, Assistant U.S. Attorney for the Southern District of New York, Westchester, New York (914)993-1941. Defendants were pro se.

E. United States v. John Halas et al., Criminal No. 97-631(JAG), a case involving Medicare fraud by a durable medical equipment company. I handled the initial part of the investigation which led to the pleas of guilty by both principals in the mid-1990's. Defense counsel: Elaine Metlin, Esq., Dickstein, Shapiro, Morin & Oshinsky, 2101 L Street, N.W., Washington, D.C., 20037, (202)828-2263.

F. United States v. Henry Miles Sherman, Criminal No. 93-407(HLS), a case involving allegations of insurance fraud by a medical doctor and resulting in a guilty plea before the Honorable H. Lee Sarokin. Co-counsel: Robert Ernst, Esq., Verizon, 1095 Avenue of the Americas, New York, New York, 10036, (212)395-2121. Defense counsel: Lawrence Lustberg, Esq., Gibbons, DelDeo, Dolan, Griffinger & Vecchione, One Riverfront Plaza, Newark, NJ, 07102, (973)596-4731.

G. United States v. Blackwell, Criminal No. 95-671(AJL), a case involving embezzlement by a bank officer and money laundering with her husband. The jury convicted both in 1997 and the trial was held before the Honorable Alfred Wolin, Jr., United States District Court for the District of New Jersey, Newark, New Jersey. Co-counsel: John Fietkiewicz, Assistant United States Attorney, United States Attorney's Office, 970 Broad Street, Newark, New Jersey 07102, (973)645-2780. Defense counsel: Honorable Peter Ryan, Wilentz Justice Complex, 212 Washington Street, Newark, NJ (973)424-2420 Superior Court of New Jersey, Newark, New Jersey; Michael Pedicini, Esq., 60 Washington Avenue, Morristown, NJ 07960, (201)285-1555. Reported at United States v. Blackwell, 954 F. Supp. 944 (D.N.J. 1997), aff'd, 168 F. 3d 479 (1998).

H. United States v. Balter, Criminal No. 93-536(JBS), a murder-for-hire that resulted in jury verdicts of guilty against all four defendants who were sentenced to life imprisonment by the Honorable Jerome B. Simandle in 1994. Co-counsel: Honorable Michael A. Guadagno, Superior Court of New Jersey, Freehold, New Jersey. Defense counsel: Benjamin Brafman, Esq., 767 Third Avenue, New York, NY, 100017 (212)750-7800; Paul Brickfield, Esq., 433 Hackensack Avenue, Hackensack, NJ 07601, (201)488-7707; Justin Loughry, Esq., 714 East Main Street, Moorestown, NJ 08057, (856)439-9877; Michael Holston, Esq., Drinker, Biddle & Reath, 1345 Chestnut Street, Philadelphia, PA, (215)988-2700. Reported at United States v. Balter, 91 F. 3d 427 (3d Cir.), cert. denied, 519 U.S. 1011 (1996).

I. United States v. Jhon (correct spelling) Jairo Torres, Criminal No. 91-394 (HLS) involved an extensive money structuring organization in the northern New Jersey area. Six of the seven defendants were convicted of conspiracy to structure in 1993 before the Honorable H. Lee Sarokin, United States District Court for the District of New Jersey, Newark, New Jersey. Co-counsel: James Nobile, Assistant United States Attorney, 970 Broad Street, Newark, New Jersey 07102. Defense counsel: Honorable Peter Ryan, Wilentz Justice Complex, 212 Washington Street, Newark, NJ (973)424-2420; Patrick Mullin, Esq., 25 Main Street, Hackensack, NJ 07601, (201)488-5500; John Whipple, 264 South Building 2, Morristown, NJ 07960, (973)455-9921; Gary Mizzone, 871 McBride Avenue, West Paterson, NJ 07424; Sallyanne Floria, 130 Pompton Avenue, Verona, NJ 07044; Michael Pedicini, 60 Washington Avenue, Morristown, NJ 07960 (201)285-1555; Michael Robbins, 26 13th Avenue, Newark, NJ 07103; Kevin Carlin, 25 Main Street, Hackensack, NJ 07601.

J. In In re Prime Motor Inns, Inc., I assisted as an associate in litigating various issues related to the client, an indenture trustee. Defense counsel: Bruce Clark, Esq., Sullivan & Cromwell, 125 Broad Street, New York, NY, 10004, (212)558-4000. Reported in In re Prime Motor Inns, Inc., 130 Bankr. 610 (S.D. Fla. 1991)

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of

your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

As an Assistant United States Attorney since December 1991, I have participated in many investigations and prosecutions involving violations of federal criminal law. Several of these have involved public corruption and have resulted in significant convictions, such as the conviction of the mayor of Camden, New Jersey. Several of these convictions have involved wide-reaching fraud involving various targets. For example, one of the prosecutions I handled involved an investigation of National Medical Care, Inc., a manufacturer of dialysis accessories. The company pled guilty to a misdemeanor plea and agreed to pay a \$3.8 million fine. As another example, I handled the prosecution, with another Assistant U.S. Attorney, against Alfred Porro and his wife, Joan Atkins Porro. The Porros were attorneys in northern New Jersey, and the jury convicted them of defrauding clients and evading their income taxes.

Since January of 2000, I have served as the Attorney-in-Charge of the Camden, New Jersey office of the United States Attorney's Office. In this position, I have managed the office and directly supervised the criminal Assistant United States Attorneys, while maintaining my own significant caseload.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I participate in the Federal Employee Retirement System (FERS), including the Thrift Savings Program. Any future benefits will be received in accordance with the guidelines for the program.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

In all cases, I will follow the Code of Conduct for United States Judges, as well as all applicable statutes, policies and procedures. During my initial service, potential conflicts may exist because the case was pending at the United States Attorney's Office in Camden where I am a supervisor. I will recognize these matters and will also seek the assistance of the United States Attorney's Office to screen any conflicts. In all cases, I recognize that there could be potential conflicts of interest, and I will be vigilant in determining the parties, victims, or other interested persons or corporations, the financial interests, and the like and whether a conflict of interest exists in each case.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See the attached financial disclosure statement.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See the attached net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

AO-10 Rev. 1/2004		FINANCIAL DISCLOSURE REPORT NOMINATION FILING		Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)
1. Person Reporting (Last name, First name, Middle initial) Bumb, Renee M	2. Court or Organization District of New Jersey	3. Date of Report 1/25/2006		
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	5. ReportType (check appropriate type) <input checked="" type="radio"/> Nomination Date 1/25/2006 <input type="radio"/> Initial <input type="radio"/> Annual <input type="radio"/> Final		6. Reporting Period 1/1/2005 to 12/31/2005	
7. Chambers or Office Address U.S. Attorney's Office 401 Market Street, 4th Floor Camden, New Jersey 08101		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.				

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☒ **NONE** - (No reportable positions.)

POSITION
NAME OF ORGANIZATION/ENTITY

1. _____

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☒ **NONE** - (No reportable agreements.)

DATE
PARTIES AND TERMS

1. _____

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Burnb, Renee M

Date of Report
1/25/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)**A. Filer's Non-Investment Income**

☒ **NONE** - (No reportable non-investment income.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.		

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

☒ **NONE** - (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1.	

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ **NONE** - (No such reportable reimbursements.)

SOURCE	DESCRIPTION
1.	Exempt

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Bumb, Renee M	1/25/2006

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)
☐ **NONE** - (No such reportable gifts.)

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. _____	Exempt	_____

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)
☐ **NONE** - (No reportable liabilities.)

<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1. Courtland and Ruth Morris	Mortgage on property #1, Avalon, NJ (Pt. VII, line 1)	L
2. Third Federal Bank	Mortgage on property #2, Venice, FL. (Pt. VII, line 2)	M

FINANCIAL DISCLOSURE REPORT

Page 1 of 3

Name of Person Reporting Bumb, Renee M	Date of Report 1/25/2006
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Amount Code 1 (A-H)	Type (e.g. div. rent. or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1. Rental Property	C	Rent	M	R	Exempt				
2. Vacation Property		None	N	R					
3. Bank of America account	B	Interest	L	T					
4. Third Federal Bank account	A	Interest	M	T					
5. U.S. Savings Bonds	A	Interest	J	T					
6. Phoenix Life Insurance	A	Interest	J	T					
7. FEGLI Life Insurance		None	M	T					
8. Vanguard Index 500 Fund	B	Dividend	M	T					
9. Wells Fargo Advantage Fund	A	Dividend	J	T					
10. Franklin Templeton Fund	A	Dividend	K	T					
11. UBS Financial Account	A	Interest	B	T					
12. 529 Plan - Alliance Capital Fund	A	Dividend	L	T					
13. Ameritrade account	A	Interest	E	T					
14. Candant Common Stock	A	Dividend	J	T					
15. SCOLR Common Stock	A	Dividend	J	T					
16. Today's Man Common Stock	A	Dividend	J	T					
17. Purchase Pro Common Stock	A	Dividend	J	T					
18. Charter Communications Common Stock	A	Dividend	J	T					

1. Income/Gain Codes:	A = \$1,000 or less (See Columns B1 and D4)	B = \$1,001-\$2,500	C = \$2,501-\$5,000	D = \$5,001-\$15,000	E = \$15,001-\$50,000
2. Value Codes:	F = \$50,001-\$100,000	G = \$100,001-\$1,000,000	H1 = \$1,000,001-\$5,000,000	H2 = More than \$5,000,000	
	J = \$15,000 or less (See Columns C1 and D3)	K = \$15,001-\$50,000	L = \$50,001-\$100,000	M = \$100,001-\$250,000	
	N = \$250,000-\$500,000	O = \$500,001-\$1,000,000	P1 = \$1,000,001-\$5,000,000	P2 = \$5,000,001-\$25,000,000	
	P3 = \$25,000,001-\$50,000,000		P4 = More than \$50,000,000		
3. Value Method Codes:	Q = Appraisal (See Column C2)	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT

Page 2 of 3

Name of Person Reporting
Bumb, Renee MDate of Report
1/25/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 14-17 of filing instructions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type - (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A- H)	(5) Identity of buyer/seller (if private transaction)
19. AT&T Common Stock	A	Dividend	J	T					
20. Radio Shack Common Stock	A	Dividend	J	T					
21. Ariad Common Stock	A	Dividend	J	T					
22. VISX Common Stock	A	Dividend	J	T					
23. Comcast Common Stock	A	Dividend	J	T					
24. GE Common Stock	A	Dividend	J	T					
25. Motorola Common Stock	A	Dividend	J	T					
26. Kohl's Common Stock	A	Dividend	J	T					
27. Iron Mountain Storage Common Stock	A	Dividend	J	T					
28. Freescale Common Stock	A	Dividend	J	T					
29. Roboserver Systems Common Stock	A	Dividend	J	T					
30. Lord Abbett All Value Fund	A	Dividend	K	T					
31. Lord Abbett Midcap Value Fund	A	Dividend	J	T					
32. Dreyfus Premier Core Fund	A	Dividend	K	T					
33. Van Kampen Global Franchise Fund	A	Dividend	J	T					
34. Van Kampen Growth and Income Fund	A	Dividend	J	T					
35. Federated Kaufman Fund	A	Dividend	K	T					
36. Black Rock Aurora Fund	A	Dividend	K	T					

1. Income/Gain Codes:	A = \$1,000 or less (See Columns B1 and D4)	B = \$1,001-\$2,500 F = \$50,001-\$100,000	C = \$2,501-\$5,000 G = \$100,001-\$1,000,000	D = \$5,001-\$15,000 H1 = \$1,000,001-\$5,000,000	E = \$15,001-\$50,000 H2 = More than \$5,000,000
2. Value Codes:	J = \$15,000 or less (See Columns C1 and D3)	K = \$15,001-\$50,000 N = \$250,000-\$500,000	L = \$50,001-\$100,000 O = \$500,001-\$1,000,000	P1 = \$1,000,001-\$5,000,000 P3 = \$25,000,001-\$50,000,000	M = \$100,001-\$250,000 P2 = \$5,000,001-\$25,000,000
3. Value Method Codes:	Q = Appraisal (See Column C3)	R = Cost (Real Estate Only) U = Book Value	S = Assessment V = Other	T = Cash/Market W = Estimated	

FINANCIAL DISCLOSURE REPORT
Page 3 of 3

Name of Person Reporting Bumb, Renee M	Date of Report 1/25/2006
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VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div. rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A- H)	(5) Identity of buyer/seller (if private transaction)
37. Eaton Vance Tax Managed Fund	A	Dividend	J	T					
38. "Millionaires' Club" Stock Fund									
39. - AT&T Common Stock	A	Dividend	J	T					
40. - Comcast Common Stock	A	Dividend	J	T					
41. - Dell Common Stock	A	Dividend	J	T					
42. - E-Trade Financial Common Stock	A	Dividend	J	T					
43. - Ford Motor Common Stock	A	Dividend	J	T					
44. - GE Common Stock	A	Dividend	J	T					
45. - Genia Common Stock	A	Dividend	J	T					
46. - McDonald's Common Stock	A	Dividend	J	T					
47. - OSI Pharmaceutical Common Stock	A	Dividend	J	T					
48. - Time Warner Common Stock	A	Dividend	J	T					
49. - UPS Common Stock	A	Dividend	J	T					
50. - Universal Display Common Stock	A	Dividend	J	T					
51. - TD Waterhouse Money Market Account	A	Dividend	J	T					
52. Sirius Satellite Radio, Inc. Common Stock	A	Dividend	J	T					

1. Income/Gain Codes:	A = \$1,000 or less	B = \$1,001-\$2,500	C = \$2,501-\$5,000	D = \$5,001-\$15,000	E = \$15,001-\$50,000
(See Columns B1 and D4)	F = \$50,001-\$100,000	G = \$100,001-\$1,000,000	H1 = \$1,000,001-\$5,000,000	H2 = More than \$5,000,000	
2. Value Codes:	J = \$15,000 or less	K = \$15,001-\$50,000	L = \$50,001-\$100,000	M = \$100,001-\$250,000	
(See Columns C1 and D3)	N = \$250,001-\$500,000	O = \$500,001-\$1,000,000	P1 = \$1,000,001-\$5,000,000	P2 = \$5,000,001-\$25,000,000	
	P3 = \$25,000,001-\$50,000,000		P4 = \$More than \$50,000,000		
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Bumb, Renee M

Date of Report
1/25/2006

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Rental property #1, purchased in 1994 for \$123,000; 1/2 ownership

Property #2, vacation property, purchased in 2005, at 1/2 of \$315,000; 1/2 ownership

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Bumb, Renee M

Date of Report
1/25/2006

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature



Date

1/25/06

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		250	000	Notes payable to banks-secured			
U.S. Government securities-add schedule		14	400	Notes payable to banks-unsecured			
Listed securities-add schedule		36	000	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends			660	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		573	720
Real estate owned-add schedule	1	259	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance		14	000				
Other assets itemize:							
TSP Contributions (Account 1)		245	000				
TSP Contributions (Account 2)		235	000				
				Total liabilities		573	720
				Net Worth	1	580	340
Total Assets	2	154	060	Total liabilities and net worth	2	154	060
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT SCHEDULES

U.S. Securites:

Savings Bonds (approx.face value)	\$14,400
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Listed Securities: (approx. values)

Ariad Common Stock.....	\$ 50
ATT/ATT Wireless Common Stock.....	\$ 200
Cendant Common Stock.....	\$ 2100
Charter Communications Common Stock.....	\$ 50
Comcast Common Stock.....	\$ 2200
Dell Common Stock.....	<\$ 1000
E-Trade Common Stock.....	<\$ 1000
Ford Motor Common Stock.....	<\$ 1000
Freescale Common Stock.....	\$ 100
General Electric Common Stock.....	<\$ 9000
Genta, Inc. Common Stock.....	<\$ 500
Iron Mountain Storage Common Stock.....	\$ 1200
Kohls Common Stock.....	\$ 1500
McDonalds Common Stock.....	<\$ 1500
OSI Pharmaceutical Common Stock.....	<\$ 1000
Purchase Pro Common Stock.....	\$ 0
Radio Shack Common Stock.....	\$ 2250
Roboserver Systems Common Stock.....	\$ 800
SCOLR Common Stock.....	\$ 5000
Sirius Common Stock.....	<\$ 1000
Time Warner Common Stock.....	\$ 150
Todays Man Common Stock.....	\$ 0
Universal Display Common Stock.....	<\$ 1000
UPS Common Stock.....	<\$ 1000
VISX Common Stock.....	<u>\$ 2400</u>
TOTAL.....	\$36,000

Real Estate Owned:

Personal Residence.....	\$ 500,000
Rental Property (½ ownership).....	\$ 400,000
Vacation Property (½ ownership).....	\$ 39,500
Approx. 100 acres.....	<u>\$ 320,000</u>
TOTAL.....	\$1,259,000

Real Estate Mortgages Payable:

Personal Residence.....	\$280,000
Rental Property.....	\$ 58,720
Vacation Property.....	<u>\$235,000</u>
TOTAL.....	\$573,720

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I am on the Advisory Board for St. John of God Community Services, Westville, New Jersey, a school for the physically disabled. I volunteer my services there as needed.

I am on the Cathedral Chapter Board for the Immaculate Conception Church, Camden, New Jersey. I volunteer my services there as needed.

I am a Sunday school teacher for the Camden Cathedral's faith and education program.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No, I have never belonged to any organization that discriminates.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which

led to your nomination and interviews in which you participated).

On May 2, 2005, I interviewed with members of the Office of White House Counsel and the United States Department of Justice. On May 10, 2005, I interviewed with members of a selection committee established by United States Senators Frank Lautenberg and Jon Corzine. On May 18, 2005, I interviewed with Senators Launtenberg and Corzine. After completing nomination paperwork and undergoing a background investigation, I was informed by the White House that I would be formally nominated, and my nomination was submitted to the Senate on January 25, 2006.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The role of the judiciary should be limited to the case or controversy before it. The judiciary should not render advisory opinions. The judiciary should not engage in making law, this is the role of the legislature.

The judge should ensure that the issue that is being presented to the court is one that is ripe. The judiciary should not anticipate a question of constitutional law in advance of the necessity of deciding it. The judge should also ensure that the litigant who appears before the court has standing.

In making a decision, the judge should first look to the statute and uphold the law according to the statute. If the statute is not clear on its face, the judge should apply the canons of statutory construction in reaching its decision. If the statute is not clear, the judge should examine legislative history to determine the intent of Congress.

The judge should also look to precedent. Unlike the legislative process, stare decisis signifies the basis characteristic of the judicial process. A judge is bound to follow precedent.

The judge should not use the courts to impose his or her own personal views.

AFFIDAVIT

I, Renée Marie Bumb, do swear that
the information provided in this statement is, to the best of my
knowledge, true and accurate.

February 10, 2006
(DATE)

Renée Marie Bumb
(NAME)

Roberta C. Costigan
(NOTARY)

ROBERTA C. COSTIGAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 30, 2008

Senator HATCH. Mr. Hillman?

**STATEMENT OF NOEL LAWRENCE HILLMAN, NOMINEE TO BE
DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY**

Mr. HILLMAN. Thank you, Senator. I am here with my wife, Tracy Hillman, and I tell her every day how wonderful she is.

[Laughter.]

Mr. HILLMAN. So I won't repeat that.

Senator HATCH. I think that first witness was good for all of us, don't you?

Mr. HILLMAN. I think so. You can't tell the people you love you love them enough.

Senator HATCH. That is right.

Mr. HILLMAN. I am also here with my three children, and John is 13.

Senator HATCH. John, you are looking good.

Mr. HILLMAN. Drew is fast approaching 11.

Senator HATCH. Drew looks good, too.

Mr. HILLMAN. And our dear little Paige is 6, Senator.

Senator HATCH. Hi, Paige. How are you? You look better than the boys.

[Laughter.]

Mr. HILLMAN. I appreciate the opportunity to do that.

Senator HATCH. We are honored to have you here. We are surely honored to have your family here. You seem too young to be a judge, a Federal district judge, is all I can say, with all those young children. That is just terrific, though. Happy to have you here, and we hear really good things about all four of you.

[The biographical information of Noel Hillman follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Noel Lawrence Hillman

2. Address: List current place of residence and office address(es).

Residence: Great Falls, Virginia

Office: United States Department of Justice
10th and Constitution Avenue, NW
Washington, DC 20005

3. Date and place of birth.

December 22, 1956

Red Bank, New Jersey

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married. Tracy Lee O'Connor. Homemaker

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

New York University School of Law, 1985-98, Awarded LLM (Trade Regulation), 1998

Seton Hall University School of Law, 1981-85, Awarded JD, *cum laude*, May 1985

Monmouth College, 1978-81, BA in English, *cum laude*, May 1981

Oxford College of Emory University, 1977, no degree

Berry College, 1976-77, no degree

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1992 to Present, United States Department of Justice
 Senior Counsel to the Assistant Attorney General; Chief, Public Integrity Section, 2003-2006; Acting Chief, Public Integrity Section, 2002-2003; Principal Deputy Chief, Public Integrity Section, 2001-2002; Deputy Chief, Criminal Division, United States Attorney's Office, District of New Jersey, 2000-2001; Trial Attorney, Campaign Finance Task Force, 1999-2000; Assistant U.S. Attorney, United States Attorney's Office, District of New Jersey, 1992-2001.

1988 – 1992, Lord Day & Lord, Barrett Smith, associate attorney

1986 – 1988, Honorable Maryanne Trump Barry - United States District Judge, law clerk

1986, Hillman & Sullivan, Esqs., associate attorney

1985 (summer), Lord Day & Lord, summer associate

1984, Hillman & Sullivan, Esqs., law clerk

1981-84, Monmouth Stereo Center, sales associate

1995 – Present (but inactive), Global Research, Inc., Director

1990 – Present, Surfrider Foundation
 Board of Directors, New Jersey Chapter, 1990 – 1993; National Board of Directors, 1993 – 1997; Board of Advisers, 1997 - Present

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I have received several awards from the Department of Justice. In 2005 I received the Assistant Attorney General's Award for Outstanding Leadership in Law Enforcement and in 2004 I received the Attorney General's Award for Fraud Prevention. While

serving as an Assistant U.S. Attorney in New Jersey, I twice received the Director's Award for Superior Performance from the Executive Office of United States Attorneys (1996 and 1999).

Articles Editor, Seton Hall Law Review

I received several merit scholarships in college to attend the school's English Honors Program. I also received a scholarship of free tuition for my last year of law school because of my election to the Law Review editorial board.

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

I joined the New Jersey Bar Association in 1999 and served as a founding member of the Securities Litigation and Regulatory Reform Committee. I discontinued my bar association when I moved to Virginia in 2001.

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

To the best of my knowledge, I belong to no organizations that are active in lobbying before public bodies. I belong to the following organizations:

National Association of Olmsted Parks, Washington, DC
Thompson Boat Center, Washington, DC
Rails-to-Trails Conservancy, Washington, DC
Nature Conservancy, Arlington, VA
National Arbor Day Foundation, Nebraska City, NE
St. John's Episcopal Church - Lafayette Square, Washington, DC
American Mensa, Ltd., Arlington, TX
Surfrider Foundation, San Clemente, CA

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

New Jersey Supreme Court – 1986 (state courts)
United States District Court for the District of New Jersey – 1988
New York App. Div., 1st Dept. – 1990 (state courts)
United States District Court for the Eastern District of New York – 1991
United States District Court for the Southern District of New York – 1991
United States Court of Appeals for the First Circuit – 2006

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Publications:

Essay, *Intractable Consent: A Legislative Solution to the Aging Consent Decrees in U.S.v. ASCAP and U.S. v. BMI*, 8 Fordham IP, Media & Entertain. Law Journal 55 (1998)

American Bar Association publications, Diversion Symposium, *Arbitraging Dog Food* (1995)

Law Review Comment, *The Fair Use of Free Broadcast Television*, 15 Seton Hall L. Rev. 54 (1985)

Speeches:

2006 Department of Defense Inspector General, Procurement Fraud Working Group, Monterey, CA (corruption and campaign finance)

2005 American Bar Association, Section on Criminal Law, Chicago, IL (prosecuting regulatory crimes)

2005 Global Forum IV, Brasilia, Brazil (corruption and political financing)

2005 President's Council on Integrity and Efficiency (PCIE) Inspectors General Annual Conference, Philadelphia, PA (IG Law Enforcement Powers)

2005, 2004, 2003, & 2002 Department of Justice, Ballot Access and Voting Integrity Initiative, Washington, DC (election crime and campaign finance)

2005, 2004 & 2003 Department of Justice, Public Corruption Conference, Columbia, SC (election crime and campaign finance)

2005, 2004 & 2003 PLI-Corporate Political Activities: Complying with Campaign Finance, Lobbying, and Ethics Laws, Washington, DC (campaign finance)

2004 American Conference Institute's 2nd National Forum on Corporate Compliance with the Bipartisan Campaign Reform Act, Washington, DC (campaign finance)

2004 Metropolitan Crime Commission of New Orleans Annual Meeting, Keynote Speaker (public corruption)

2005, 2004 & 2003 PLI-Corporate Political Activities: Complying with Campaign Finance,

Lobbying, and Ethics Laws, Washington, DC (campaign finance)

2003 12th Annual Burkenroad Symposium on Business and Society, Tulane University, A.B. Freeman School of Business, New Orleans, LA (public corruption)

2003 National Association of Secretaries of State Summer Conference, Portland, ME (election crimes)

2003 U.S. Office of Government Ethics, Annual Conference Keynote Speaker, Valley Forge, PA (conflicts of interest)

2003 The Exchange Club of Ocean City, NJ Annual Dinner (political corruption)

2002 U.S. Department of Justice, Ethics Advisors Seminar, Columbia, SC (conflicts of interest)

2002 Drug Counterfeiting Prevention Seminar, Center for Business Intelligence, Washington, DC (diversion fraud)

2000, 1999, & 1997 U.S. Department of Justice, Advanced Money Laundering Seminar, Columbia, SC (white collar money laundering techniques and charging decisions)

2000, 1999, & 1996 National Association of Credit Managers Credit Congress, Baltimore, MD (credit, bankruptcy, and international trade fraud)

2000 & 1999 U.S. Customs Training Academy, Glynco, GA (arms and export control)

1999 U.S. Department of Justice, OPDAT program, Kiev, Ukraine (money laundering)

1998 U.S. Customs Northeast Associate Chief Counsel Conference, Newport, RI (arms control and technology transfer; international trade fraud)

1995 American Bar Association, Section on International Law, San Francisco, CA (international trade fraud)

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. Date of Last Exam: June 27, 2005

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held judicial office.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I have never been a judge.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Other than the public offices to which I was appointed within the Department of Justice, listed in Question 6, I have held no public office. I have never been a candidate for elective public office.

17. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

1986 – 1988
Honorable Maryanne Trump Barry
United States District Judge for the District of New Jersey

2. whether you practiced alone, and if so, the addresses and dates;

I never practiced alone

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

- 1992 to Present United States Department of Justice,
Criminal Division
10th & Constitution Avenue, N.W.
Washington, DC 20005
- Senior Counsel to Assistant Attorney General, 2006-Present
Chief, Public Integrity Section, 2003-2006
Acting Chief, Public Integrity Section, 2002-2003
Principal Deputy Chief, Public Integrity Section, 2001-2002
Trial Attorney, Campaign Finance Task Force, 1999-2000
- 1992-2001 United States Attorney's Office, District of New Jersey
970 Broad Street
Newark, NJ 07102
- Deputy Chief, Criminal Division, 2000-2001; Assistant U.S. Attorney, 1992-2001
- 1988 – 1992 Lord Day & Lord, Barrett Smith – Associate attorney
1675 Broadway
New York, New York
- 1986 Hillman & Sullivan, Esqs. – Associate attorney
517 5th Avenue
Belmar, New Jersey
- 1985 Lord, Day & Lord – Summer Associate
25 Broadway
New York, New York

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1986 – Small firm, general practice
1986-88 – Judicial law clerk
1988-92 – White Collar Defense, Securities Litigation
1992-present – Criminal Law, prosecutor

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My first job was with a small firm. Typical clients were small local businesses and some individuals. After my clerkship, I worked in a large

Wall Street law firm. The typical client was a multi-national corporation, primarily a financial services firm or brokerage house. Since 1992, my client has been the United States.

I am knowledgeable in the following substantive areas of law: public corruption; campaign finance; money laundering; export and arms control; government contracting, mail, wire, insurance, financial institution, and securities fraud; customs law; international trade; anti-trust; and intellectual property.

- c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

1986 – Small firm - Occasionally
 1986-88 – Not at all - Judicial law clerk
 1988-92 – Large Firm – Infrequently (primarily pro bono matters)
 1992-2001 – Federal prosecutor - Frequently
 2001-present – Supervising prosecutor - Infrequently

2. **What percentage of these appearances was in:**

(a)	federal courts:	96%
(b)	state courts of record:	2%
(c)	other courts:	2%

3. **What percentage of your litigation was:**

(a)	civil:	15%
(b)	criminal:	85%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

I tried one case as sole counsel, one as chief counsel, one as associate counsel

In addition, I tried several minor non-jury matters in magistrate's court involving offenses on federal reservations.

5. **What percentage of these trials was:**

(a)	jury;	60%
(b)	non-jury.	40%

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Jack Abramoff, (Crim. No. # 06-001 - Hon. Ellen Segal Huvelle – District of Columbia (2006))

Former lobbyist convicted fraud, conspiracy, and tax evasion. I was lead government counsel.

Co-counsel:

Mary Butler, Trial Attorney
Public Integrity Section - Bond Building
1400 New York Avenue, NW
Washington, DC 20005
202-616-7529

Defense Counsel:

Abbe D. Lowell, Esq.
Chadbourn and Parke
1200 New Hampshire Avenue, NW
Washington, DC 20036
(202) 974-5600

2. United States v. Samuel Berger, (Crim. No. #: 1:05-mj-00175 - Hon. Deborah A. Robinson – District of Columbia (2004))

Former National Security Adviser convicted of mishandling classified materials. I was lead government counsel.

Co-counsel:

Howard Sklamberg, AUSA
United States Attorney's Office- DC
555 4th Street NW Room 5822
Washington, DC 20001
202-514-7296
Thomas Reilly, Trial Attorney

Counterespionage Section
1400 New York Avenue, NW
Washington, DC 20005
202-305-7831

Defense Counsel:
Lanny Breuer, Esq.
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401
(202) 662-5538

3. U.S. v. David Chang, (Crim. No. 99-726 - Hon. Alfred M. Wolin – District of New Jersey (2000))

Campaign finance; commodities broker convicted of obstruction of justice and unlawful donations to a 1996 U.S. Senate campaign. I was co-lead government counsel.

Co-counsel:
Michael Savage, AUSA
Criminal Chief, WDNC
227 West Trade Street
Charlotte, NC 28202
704-344-6222

Defense counsel:
Bradley Simon
Simon & Partners
30 Rockefeller Plaza, 42nd Floor
New York, New York 10012
212-332-8900

4. U.S. v. Daniel Malloy, (Crim. No. 98-177 - Hon. Alfred M. Wolin – District of New Jersey (1998))

Arms Export Control Act; helicopter and aircraft parts dealers convicted for transshipping missile and F-14A fighter jet parts to Iran. I was lead government counsel.

Co-counsel:
Colleen Piccone
Department of Homeland Security
Office of Chief Counsel

1 Penn Plaza - 11th Floor
New York, NY 10119
646-733-3200

Defense counsel:
Brian Neary, Esq.
190 Moore Street
Hackensack, NJ 07601
201-488-0544

Gerald Krovatin, Esq.
Krovatin & Associates, LLC
744 Broad Street - Suite 1903
Newark, NJ 07102
973-424-9777

Dennis D.S. McAlevy, Esq.
1814 Kennedy Blvd.
Union City, NJ 07087
201-867-2008

5. U.S. v. Robert Roque, (Crim. No. 00-67 - Hon. Stephen M. Orlofsky – District of New Jersey (2000))

False statements; offshore food broker convicted for causing manufacturer to file false statements with the Department of Agriculture. I was sole government counsel.

Defense counsel:
Martin Raskin, Esq.
Raskin & Raskin
2601 South Bayshore Drive, Suite 600
Miami, Florida 33133
305-444-3400

6. U.S. v. Craig Aalseth, (Crim. No. 97-713 - Hon. John C. Lifland – District of New Jersey (1998))

Wire fraud; stockbroker convicted for capitalizing offshore insurance companies by manipulating and overvaluing worthless securities. I was sole government counsel.

Defense counsel:
Joseph Milchen, Esq.

Franck & Milchen
136 Redwood Street
San Diego, California 92103
619-574-1888

7. U.S. v. Enrique Piana, et al., (Crim. No. 97-299 - Hon. Joseph E. Irenas – District of New Jersey (1998))

Bank and customs fraud; Argentine metals broker and manufacturer convicted in \$500 million scheme to defraud a U.S. bank and Argentine government through overvalued precious metals. I was lead government counsel.

Co-counsel:
Colleen Piccone, Esq.
Department of Homeland Security
Chief Counsel
1 Penn Plaza - 11th Floor
New York, NY 10119
646-733-3200

Defense counsel:
Alberto Rivas, Esq.
Lite DePalma Greenberg & Rivas LLC
Two Gateway Center, 12th Floor
Newark, NJ 07102-5003
973-623-3000

8. U.S. v. Mary Ellen Kitler, (Crim. No. 95-374 – Hon. John C. Lifland – District of New Jersey (1995))

Swiss resident convicted of false U.S. tax returns. I was sole government counsel.

Defense counsel:
Sally Anne Floria, Esq.
(Now Judge of the Superior Court)
Essex County Courthouse Complex New Courts Building
50 West Market Street
Newark, NJ 07102
973-693-5877 x5878

9. U.S. v. Michael Clark, et al., (Crim. No. 94-197 – Hon. Joseph E. Irenas – District of New Jersey (1995))

Money laundering and wire fraud, Texas financial adviser and Utah insurance company executive convicted in scheme to launder gambling proceeds through non-bank financial institutions. I was sole government counsel.

Defense counsel:
James A. Rolfe, Esq.
Collin, Dallas & Denton Cos.
2727 Routh Street
Dallas, TX 75201
214-740-9955

Richard Coughlin
Federal Public Defender
Camden Division
800-840 Cooper Street
Suite 350
Camden, NJ 08102
856-757-5341

10. U.S. v. Artemios Koufoglannakis, (Crim. No. 94-441 – Hon. Jerome B. Simandle – District of New Jersey (1993))

Food Broker convicted of bust-out bankruptcy fraud. I was chief government counsel.

Defense counsel:
Peter R. Willis, Esq.
921 Bergen Avenue
Jersey City, NJ 07306
201-659-2090

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

As Chief of the Public Integrity Section (PIN) at the Justice Department, I had a varied litigation and non-litigation practice. As Chief, I provided advice and counsel to the Assistant Attorney General (AAG) for the Criminal Division and the AAG's deputy on all public corruption matters and oversaw the Department's nationwide anti-corruption program including all election crime and campaign finance offenses. I also oversaw all PIN litigation, reviewing

and approving all indictments, informations, plea agreements, and other pleadings filed by PIN's 26 attorneys in courts throughout the United States and its territories. In recusal cases handled by PIN, I acted as the United States Attorney in several judicial districts. I also served as co-head of the Department's Ballot Access and Voting Integrity Initiative, a program designed to encourage voting and discourage voting fraud.

As Chief, I worked closely with senior management of the FBI, the Inspector General community, the intelligence community, the Office of Government Ethics, the Federal Election Commission, and the Election Assistance Commission. For example, by Executive Order I served as counsel to the Integrity Committee of the President's Council on Integrity and Efficiency, which fields complaints about IGs and their senior staff and as a statutory member of the Advisory Board of the Election Assistance Commission. I also sat as a permanent member of the FBI's Criminal Undercover Operations Review Committee (CUORC) to help insure all FBI undercover operations are operated consistent with Attorney General Guidelines, statutory law, and the constitution.

I have also served, at the request of the State Department, as a U.S. delegate to Global Forums III and IV, the world's foremost anti-corruption conference, and to the United Nations Convention Against Corruption (UNCAC) in Merida, Mexico and Vienna, Austria. I played an important role in the negotiations of the UNCAC which is now undergoing worldwide ratification and will soon enter into force as the world's first comprehensive multi-lateral anti-corruption treaty.

On January 31st, 2006, soon after my nomination, I was voluntarily reassigned from PIN to serve as Senior Counsel to the Assistant Attorney General, Criminal Division, where I provide advice to the Assistant Attorney General, Criminal Division, and her staff on a wide range of law enforcement matters.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

Since I began service as a federal employee, I have participated in the Federal Retirement System through Thrift Savings Plan and have an outstanding investment in that retirement plan.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

I would, in all cases, consult and follow the Code of Conduct for United States Judges and applicable statutes. With regard to particular matters, I have served, or have been asked to serve, on the Board of Directors of certain environmental organizations. In order to avoid an appearance of a conflict or bias I would resign from such positions at the time of my confirmation by the Senate. In addition, if confirmed, I intend to arrange my financial affairs to avoid, as much as possible, any potential conflict. I have no other potential conflicts of interest that might arise during my initial service.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

None, although I would likely seek to lecture at local law schools and become involved in national and local bar associations where appropriate, and in accordance with judicial guidelines for outside service and income limitations. As with other potential conflicts of interest, I would consult and follow the Code of Conduct for United States Judges and applicable statutes regarding outside activities.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

See attached financial disclosure report.

- 5. Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached financial net worth statement.

- 6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

In 1978, I briefly served as a phone bank volunteer for the campaign of Thomas Gagliano, then running for re-election as a Republican State Senator in New Jersey.

AO-10 Rev. 1/2004		FINANCIAL DISCLOSURE REPORT Calendar Year 2005		Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)	
1. Person Reporting (Last name, First name, Middle initial) Hillman, Noel L.		2. Court or Organization District Court - New Jersey		3. Date of Report 1/30/2006	
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) Nominee		5. ReportType (check appropriate type) <input checked="" type="radio"/> Nomination, Date 1/25/2006 <input type="radio"/> Initial <input type="radio"/> Annual <input type="radio"/> Final		6. Reporting Period 1/1/2005 to 12/31/2005	
7. Chambers or Office Address 10th & Constitution Ave., NW Washington, DC 20005		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____			
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.					

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ **NONE** - (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Board of Trustees	Global Research, Inc.
2. Board of Advisors	Surfrider Foundation

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☒ **NONE** - (No reportable agreements.)

DATE	PARTIES AND TERMS
1. _____	_____

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Hillman, Noel L	Date of Report 1/30/2006
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III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)**A. Filer's Non-Investment Income**☒ **NONE** - (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>GROSS INCOME</u> (yours, not spouse's)
-------------	------------------------	--

1. _____

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria))☒ **NONE** - (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>
-------------	------------------------

1. _____

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ **NONE** - (No such reportable reimbursements.)

<u>SOURCE</u>	<u>DESCRIPTION</u>
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1. _____

Exempt

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Hillman, Noel L.	1/30/2006

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ **NONE** - (No such reportable gifts.)

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt	

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☐ **NONE** - (No reportable liabilities.)

<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1. USAA Savings Bank	Credit Card	J

FINANCIAL DISCLOSURE REPORT**Page 1 of 1**

Name of Person Reporting Hillman, Noel L.	Date of Report 1/30/2006
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VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div, rent or int.)	(1) Value Code 2 (I-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month - Day	(3) Value Code 2 (I-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1. 401K - TIAA Traditional	A	Interest	J	T					
2. 401K - TIAA Real Estate	A	Interest	J	T					
3. 401K - CREF - Money Market	A	Interest	J	T					
4. 401K - CREF - Social Choice	A	Interest	J	T					
5. 401K - CREF - Bond Market	A	Interest	J	T					
6. 401K - CREF - Equity Index	A	Interest	J	T					
7. UTMA-NJ - USAA Money Market	A	Dividend	J	T					
8. UTMA-NJ - USAA Aggressive Growth Fund	A	Dividend	J	T					
9. UTMA-NJ - USAA Aggressive Growth	A	Dividend	J	T					
10. UTMA-NJ - USAA First Start Growth Fund		None	J	T					
11. USAA Short-Term Bond Fund	A	Dividend	J	T					
12. Gibbons Thrift c/o T. Rowe Price - Ariel Fund	B	Dividend	J	T					
13. Gibbons Thrift c/o T. Rowe Price - Equity Income	A	Dividend	J	T					
14. Gibbons Thrift c/o T. Rowe Price - Spectrum Income	B	Dividend	K	T					
15. Gibbons Thrift c/o T. Rowe Price - Prime Reserve	A	Dividend	J	T					
16. IRA - Old Mutual Cash Reserves	A	Dividend	J	T					
17. IRA - Old Mutual Tech & Comm		None	J	T					
18. IRA - Old Mutual Mid Cap Fund	A	Dividend	J	T					

1. Income/Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001-\$100,000	B = \$1,001-\$2,500 G = \$100,001-\$1,000,000	C = \$2,501-\$5,000 H1 = \$1,000,001-\$5,000,000	D = \$5,001-\$15,000 H2 = More than \$5,000,000	E = \$15,001-\$50,000
2. Value Codes: (See Columns C1 and D3)	J = \$15,000 or less N = \$250,000-\$500,000 P3 = \$25,000,001-\$50,000,000	K = \$15,001-\$50,000 O = \$500,001-\$1,000,000	L = \$50,001-\$100,000 P1 = \$1,000,001-\$5,000,000 P4 = More than \$50,000,000	M = \$100,001-\$250,000 P2 = \$5,000,001-\$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash/Market	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Hillman, Noel L.	Date of Report 1/30/2006
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part III - Income exempt from disclosure, Section 102(a)(1)(A) - Federal Salary

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Hillman, Noel L.	Date of Report 1/30/2006
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IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature

Noel L. Hillman

Date

1/30/06

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		6	000	Notes payable to banks-secured			
U.S. Government securities-add schedule		9	150	Notes payable to banks-unsecured			
Listed securities-add schedule		1	010	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		30	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		470	000
Real estate owned-add schedule	1	050	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		90	000				
Cash value-life insurance							
Other assets itemize:							
FERS-TSP		220	000				
Gibbons/T.Rowe 401K-		60	000				
CREF-TIAA		23	000	Total liabilities		500	000
See attached schedule		49	200	Net Worth	1	008	360
Total Assets	1	508	360	Total liabilities and net worth	1	508	360
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT**NET WORTH SCHEDULES**U.S. Government Securities

Series EE Bonds	<u>\$9,150</u>
Total:	\$9,150

Listed Securities

Lucent Technologies Inc.	600
Avaya Inc.	150
Viropharma Inc.	210
Agere Systems Inc.	<u>50</u>
Total:	\$1,010

Other Assets

USAA Aggressive Growth Fund	\$12,000
USAA First Start Growth Fund	4,000
USAA Short Term Bond Fund	1,800
Old Mutual Cash Reserves	4,000
Old Mutual Technology and Communications Fund	3,700
Old Mutual Mid Cap Fund	4,300
FBR Small Cap Financial	2,400
Cash Value – Unused annual leave	15,000
Fidelity Unique College Savings Plan	<u>2,000</u>
Total:	\$49,200

Real Estate Owned

Primary residence	<u>\$1,050,000</u>
Total:	\$1,050,000

Real Estate Mortgages Payable

Astoria Federal Savings Bank	390,000
USAA Federal Savings Bank	<u>80,000</u>
Total:	\$470,000

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

I have been engaged in pro bono and community activities of various kinds at various times throughout my adult and professional life. Practicing law is a privilege and I believe that every lawyer has an obligation to serve their community in some fashion.

While at Lord Day, I participated in the firm's pro bono program. I represented an employee of the New York City Department of Education who alleged he was discriminated against because of his race. I filed suit in federal court on his behalf and settled the matter to his satisfaction. I also provided free services through the firm to the Gill Commission, established by the then-mayor Ed Koch, to reform the New York City school system. While at Lord Day, I also lent my services to a chapter-based international environmental organization that sought to establish New York and New Jersey chapters. I helped to write the chapter by-laws, insured compliance with state laws, and was later asked to join the National Board of Directors. In that capacity, I helped to negotiate employment contracts, international trademark agreements, and hired local counsel as well as provided general legal advice to the Board. Since 1997 I have served on the foundation's Board of Advisors. In total, I spent approximately 10 to 20% of my time on pro bono matters while in private practice.

When I left private practice and joined the U.S Attorney's Office, I continued to engage in community activities. Along with another AUSA, I established a mentor program in conjunction with the New Community Corporation, a Newark, New Jersey-based community development corporation serving Newark's most needy. We paired AUSAs with students at a local middle school, took them on field trips to camps, museums, and the beach, providing guidance and a positive outlook. I also assisted a local community group formed in another part of Newark to save and rehabilitate a local park. I assisted the group, called SPARK, in writing a set of by-laws and internal operating procedures. Through the office and on my own, I also participated in several Habitat for Humanity projects. Since coming to Washington, I have twice spent a Saturday at a local pro bono clinic providing services to indigent residences of DC. I have also been invited to join the National Board of Trustees of an organization seeking to protect and rehabilitate urban parks. I have declined to join at this time pending the outcome of this process. Since joining the government, I have spent approximately 1,000 hours on pro bono activities.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I do not and never have belonged to any such organization.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

Yes, there is a committee. I understand the committee to have been formed by New Jersey's Senator Lautenberg and then-Senator Corzine. I believe, but do not know, that it recommended my nomination. I was asked by the Office of White House Counsel if I would be interested in interviewing for a judicial position in New Jersey. After that interview, I was invited to meet with the selection committee and soon thereafter with Senators Corzine and Lautenberg. I completed nomination paperwork and underwent a background investigation. On January 25, 2006, the President submitted my nomination to the Senate.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

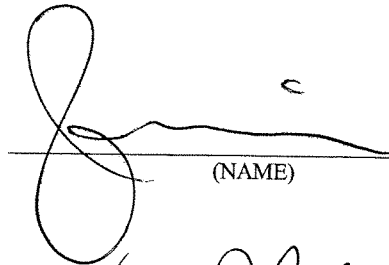
I believe in the fundamental constitutional principle of separation of powers. At the risk of simplifying a complicated issue, I believe that legislatures make law, executives enforce the law, and judges interpret the law. Judges should be careful not to use the cases before them to advocate a particular view of the law. To do so is to run the risk of usurping executive power and harming the perception of a neutral judiciary. Similarly, courts should avoid the perception and reality that their rulings are designed to extend beyond the issues and parties before them. To do so is to run the risk of usurping legislative power. Broad policy determinations should be left to bodies subject to the check of public approval through elections.

A district judge should be able to resist these temptations through rigorous application of the principle of stare decisis. The court should start with a comprehensive review of applicable statutory law, the controlling precedents of higher courts, the persuasive reasoning of equal or collateral courts, and time-honored and settled concepts of fundamental constitutional and common law. The answer to almost every question will be found if this methodology is followed in a principled way. Only in the absence of such authority, which is rare for a district court, should a court fashion an opinion that forges new law.

AFFIDAVIT

I, Noel L. Hillman, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Feb. 28, 2006
(DATE)


(NAME)

My Commission expires 2/29/09
Valerie J. Jada
D.C. (NOTARY)

Senator HATCH. Mr. Sheridan?

**STATEMENT OF PETER G. SHERIDAN, NOMINEE TO BE
DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY**

Mr. SHERIDAN. Thank you, Senator. I'd like to say that I'm thankful for this Committee to have a hearing for me with my colleagues, as well as I'd like to thank the President for putting my name in nomination, and for Senators Menendez and Lautenberg for moving forward on our nominations.

Senator HATCH. You bet.

Mr. SHERIDAN. With me today are my family: my wife, Barbara; my children Katherine, Tom, and Peter; and behind them are my two sisters, Rose and Ann; and my co-worker, Harriet Tyrrell and her husband, Brian.

Senator HATCH. That is great.

Mr. SHERIDAN. Thank you, Senator.

Senator HATCH. We are so happy to have all of you here. What a nice family. We are just grateful to have all of you here today.

Mr. SHERIDAN. I appreciate the opportunity.

[The biographical information of Peter Sheridan follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Peter G. Sheridan

2. Address: List current place of residence and office address(es).

Residence

Princeton Junction, NJ 08550

Spring Lake, NJ 07762

Office50 West State Street
Suite 1008
Trenton, NJ 086084 Headquarters Plaza
P.O. Box 1991
Morristown, NJ 07962

3. Date and place of birth.

Date of Birth: 4/21/50

Place of Birth: Cambridge, MA

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married July 20, 1974 to Barbara Alworth Sheridan

Spouse's Occupation: Reading Teacher

Employer Name and Address:

West Windsor-Plainsboro School District
Dutch Neck School
Village Road, Princeton Junction, NJ 08550

5. **Education:** List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

<u>School</u>	<u>Dates of Attendance</u>	<u>Degree</u>	<u>Date of Degree</u>
St. Peter's College	9/68 - 6/72	B.S. Political Science	1972
Seton Hall University School of Law	9/74 - 5/77	Juris Doctorate	1977

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

<u>Dates</u>	<u>Employer</u>	<u>Position</u>
1972-1974	N.J. Bell	Sales Representative
1975 (Summer)	N.J. Transit	Law Clerk
1976-1977	Law Office of Stephen Moses	Law Clerk
1977-1978	County of Bergen	Law Secretary/Hon. James J. Petrella, JAD
1978-1981	Port Authority of NY/NJ Office of NJ Solicitor	Attorney
1981-1984	McCarthy and Schatzman	Associate
1984-1987	Atlantic City Casino Association	Vice President and General Counsel
1987-1990	Office of Governor Thomas Kean	Director of Authorities Unit
1989-1992	Cranbury Swim Club	Trustee and President
1990-1992	New Jersey Commission on Capital Budgeting and Planning	Member

1990-1992	Cohen, Shapiro, Polisher, Shiekman & Cohen	Of Counsel
1992-1993	Cullen and Dykman	Partner
1993-1994	N.J. Republican State Committee	Executive Director
1994-1995	Cullen and Dykman	Partner
1995-1997	Delaware Valley Volunteers of America	Trustee
1995-present	Graham, Curtin & Sheridan	Shareholder/Director
1995 - 2002	Republican Leadership Council	Trustee
2001- Present	St. Peter's College	Trustee

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

New Jersey National Guard, Roseville Armory, Newark, NJ, Spec 4 (1969-1975)
Honorable Discharge

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Alumnus of the Year awarded by St. Peter's College in 2003 in recognition of loyalty to the College for my service over the past decade as Chair of the Board of Alumni, Chair of the Board of Regents, and Member of the Board of Trustees for the College.

Leadership New Jersey (Class of 1988). The purpose of the organization is to identify emerging leaders of the State and to develop their knowledge of public policy in order to solve state issues.

Cross Key Honor Society (1972) of St. Peter's College, a distinction awarded to those student leaders who actively contribute to betterment of student life.

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

New Jersey Bar Association
 Association of the Federal Bar
 Supreme Court Committee on Model Jury Charges (1982-1984 approx.)
 Supreme Court Historical Society (2002 to present)

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Southern New Jersey Development Council, Trustee (1993-present)
 (this organization appears before public bodies)

Old York Country Club

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

New Jersey State Bar	1977
U.S. District Court, Dist. of NJ	1977
New York State Bar	1980

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Note, "Landlord may be Liable for Theft after Suitable Notice of Defective Lock", 7 *Seton Hall L. Rev.* 683 (1976).

"Neither Snow Nor Rain, But Maybe Anthrax: Bioterrorism and Absentee Ballots in New Jersey," *Election Law Journal*, Vol. 1, Issue 3 (2002).

Op. Ed., "Casino Employees Have Rights Too", *Atlantic City Press*, Nov. 26, 1987.

Comprehensive Reforms to Casino Control Act, 121 *New Jersey Law Journal*, 409 (March 3, 1988).

No speeches on constitutional or legal policy.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Excellent. My last physical examination was on or about September 12, 2003. I do not smoke, and I exercise regularly (I run 20-30 miles per week).

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not Applicable.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1987-1990 Office of Governor Thomas Kean Director of Authorities Unit
(appointed)

Member, New Jersey Commission on Capital Budgeting and Planning (1990-1992) I was appointed by Governor Florio. The Commission is an advisory body to Governor and Legislature. Its purpose is to prioritize the capital needs of the State of New Jersey.

17. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Response to 17(a)(1) From September 1977 to August, 1978 I served as law secretary to the Hon. James J. Petrella, JAD. (201-996-8005). It was a very unique clerkship because of its unusually broad scope. During my year, Judge Petrella was assigned to civil trials and motions for five months, to Chancery Court for four months and subsequently temporarily assigned to the appellate division for three months. In one year, I gained substantial experience in how the judiciary operates on an every day basis at both the trial and appellate levels, in the context of a broad range of legal issues.

2. whether you practiced alone, and if so, the addresses and dates;

Response to 17(a)(2) I have never been a sole practitioner.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Response to 17(a)(3) Upon leaving the clerkship, I joined the office of the New Jersey Solicitor of the Port Authority of New York and New Jersey (September, 1978-November, 1981). This office was charged with representing the Port Authority's interest before all federal, state, administrative and municipal courts in New Jersey. Since the Port Authority was self-insured, I represented the Port Authority and Port Authority Trans Hudson Corp. (PATH) against various claims. I tried jury, non-jury trials in Superior and Federal Court, workers compensation and some DWI matters on a regular basis. During my tenure at the Port Authority, I was in court almost daily.

Wishing to enter private practice, I joined McCarthy and Schatzman in Princeton, New Jersey (December, 1981 - November, 1984). The firm was a very busy general practice and I was primarily responsible for an array of litigation including personal injury, tax appeals and real estate litigation. One very interesting case was an environmental exposure case at a laboratory on a college campus which involved a multitude of plaintiffs for various injuries (lymphoma) and death.

In 1984, I had the opportunity to join the Casino Association of New Jersey, Boardwalk and Tennessee Avenues, Atlantic City, New Jersey as vice-president and general counsel (December, 1984 - May, 1988). During those years, I focused on general corporate, legislative and administrative law matters before the Casino Control Commission and other state agencies. At the time, the casino industry was still new to the State, and the Association handled industry-wide issues primarily before the Casino Control Commission, the Division of Gaming Enforcement and the legislature. Hence, I had many appearances before the Commission and legislative committees. On the federal side, the Association was involved with the IRS on several issues and with the Department of Treasury on money laundering regulations.

Thereafter, I joined Governor Thomas H. Kean's office as Director of the Authorities Unit, Governor's Office, Statehouse, 25 West State Street, CN 001, Trenton, New Jersey 09625-001 (May, 1988 - April, 1990). Having worked at the Port Authority, I was intrigued with the relationship between the Governor and independent agencies. New Jersey has approximately 35-40 independent agencies and commissions throughout the State which substantially impact state policies. The agencies include, but are not limited to, Port Authority of New York and New Jersey, Delaware River Port Authority, Casino Reinvestment Development Authority, and the New Jersey Highway Authority (Garden State Parkway). The Governor, through the power of appointment of members and veto authority over the actions of many of these authorities, can advance political and policy goals. It was the function of my unit of professionals to interact with these authorities and to cause the Governor's policies to be implemented. One typical example was the unification of Philadelphia and Camden ports through expansion of the powers of the Delaware River Port Authority by allowing the Authority to engage in economic development projects. Since it is a bi-state agency, the Authorities Unit needed to interface with its counterparts in Harrisburg.

Upon leaving the Governor's Office, I returned to private practice. Initially with Cohen, Shapiro, Polisher, Shiekman and Cohen, Lenox Drive, Lawrenceville, New Jersey (April, 1990 - November, 1992) and then at Cullen and Dykman, 1 Riverfront Plaza, Newark, New Jersey (November, 1992 - April, 1995). At both of these large firms (over 100 lawyers), my practice was a mix of governmental relations and routine litigation including tax appeals, and personal injury defense.

From April, 1995 to present, I have been privileged to be a shareholder and director of the firm of Graham, Curtin & Sheridan. It is a well known regional firm of approximately 37 lawyers. The firm is a general practice with three major areas of concentration - litigation, transactional and government. My practice is very varied. My clients have included a managed care company, social service provider, an international energy corporation, and various governmental entities.

- b.
 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
 2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.
- c.
 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

2. What percentage of these appearances was in:
 - (a) federal courts;
 - (b) state courts of record;
 - (c) other courts.
3. What percentage of your litigation was:
 - (a) civil;
 - (b) criminal.

Response to 17(b)(1) and 17(c)(1)(2) I have broad background on issues impacting all geographic areas of the State. My practice can be divided into three phases. The first seven years were exclusively litigation. The next six years were primarily administrative and government service; and the last thirteen years have been a blend of litigation and governmental relations.

Phase I

During my years with the Port Authority from 1978-1981 I appeared in court almost daily. The litigation was exclusively civil and it can be divided approximately 90% state and administrative courts and 10% in federal courts. During my years with McCarthy and Schatzman, I appeared in court consistently. It was civil litigation and it was entirely in Superior Court and administrative law courts. I represented developers, not-for-profit corporations and individuals.

Phase II

While at the Casino Association and in the Governor's office, I appeared or interfaced consistently before the Casino Control Commission as well other state authorities and agencies occasionally in Superior Court of New Jersey.

Phase III

Since 1990, I litigate between 4 to 8 matters per year. The cases are civil in nature and are brought in Federal District Court, Superior Court or before administrative agencies. I also oversee some routine litigation for a managed care company. At one time in the mid-nineties, I was responsible for and supervised personal injury auto cases from the Market Transition Facility and Robert Plan. These cases were all in Superior Court, both trial and appellate court. My current typical clients are government agencies such as Passaic Valley Sewerage Commissioners and Township of Washington (Mercer County). In addition, I represent a managed care company; an energy company, political party committees and candidates for state wide office.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Response: Over my career, I have tried about thirty cases including administrative law cases to judgment or verdict.

5. What percentage of these trials was:
 (a) jury; 20%
 (b) non-jury. 80%

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
 (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
 (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Response: The ten most important litigated matters in which I was involved are:

1. The New Jersey Democratic Party, Inc., v. David Samson, et al. (Lautenberg Ballot), 175 N.J. 178 (2002). Chief counsel for New Jersey Republican State Committee and co-counsel for Douglas Forrester. This case stands for proposition that a political party may substitute a candidate even when there is less than 54 days before the general election under certain circumstances.

Date: September - October, 2002

Judge: Supreme Court of New Jersey
 Opinion delivered by Chief Justice Poritz

Adversaries: David Samson, Esq. (Attorney General at the time)
 Wolff and Samson
 One Boland Drive
 West Orange, NJ 07052
 973-325-1500
 Attorney for State of New Jersey

Angelo Genova, Esq.
 Genova, Burns, Trimboli & Vernioia
 354 Eisenhower Parkway
 Livingston, NJ 07039
 973-533-0777
 Attorney for New Jersey Democratic Party

Co-Counsel: William Baroni, Esq.
 Blank, Rome & Cominsky
 200 West State Street
 Trenton, New Jersey 08608
 609-278-2326
 Attorney for Douglas Forrester

2. New Jersey Conservative Party v. John J. Farmer, Jr. et al. 324 N.J. Super. 451 (App. Div. 1999). Chief counsel for New Jersey Republican State Committee (RSC) at trial, appellate and N.J. Supreme Court levels. This was a constitutional challenge to the statutory definition of political party brought by the New Jersey Conservative Party. Plaintiffs argued that their first and fourteenth amendment rights were abridged because the statute unfairly conferred a benefit on major parties (favorable ballot position) to the detriment of minor parties. Claim dismissed.

Date: Summer, 1999

Judge: Judge Clarkson S. Fisher, Jr., J.S.C., Superior Court of New Jersey, Chancery Division, Monmouth County; and appellate opinion delivered by the Hon. Dennis J. Braithwaite., JAD

Co-Counsel: Donna Kelly, Sr. DAG
 Division of Law
 Office of the Attorney General
 R.J. Hughes Justice Complex
 25 West Market Street
 CN 112
 Trenton, NJ 08625
 609-292-9302

Adversary: Eugene La Verne, Esq.
 601 Grand Avenue
 Asbury Park, New Jersey 07712
 732-897-9700
 Attorney for New Jersey Conservative Party

3. Council of Alternative Political Parties ("CAPP") v. State Div. of Election, et al., 344 N.J. Super. 225 (App. Div. 2001). Chief counsel for New Jersey Republican State Committee. This was a constitutional challenge under First and Fourteenth Amendments wherein plaintiffs argued statute prohibited people from registering as members of minor parties thereby denying said parties the right to organize. This was a bench trial and appeal on the issue of voter affiliation on state registration lists. CAPP was successful at both levels.

Date: September 10, 2001

Judge: Hon. Anthony J. Parrillo, JAD
Superior Court of New Jersey, Chancery Division, Mercer County

Co-Counsel: John Harrington, Esq. (now Judge)
Olde Courthouse
1st Floor
120 High Street
Mount Holly, NJ 08060
609-518-2595
Attorney for New Jersey Democratic State Party

Donna Kelly, Sr. DAG
Division of Law
Office of the Attorney General
R.J. Hughes Justice Complex
25 West Market Street
CN 112
Trenton, NJ 08625
609-292-9302
Attorney for State of New Jersey

Adversaries: Frank Askin, Esq.
Renee Steinhagen, Esq.
Rutgers University School of Law
Constitutional Law Clinic
Newark, New Jersey
Attorneys for Council of Alternative Political Parties

4. McGreevey for Governor '97 v. Whitman for Governor and New Jersey Republican State Committee, WL 1038802 (N.J. Admin. Ct. 1997). Trial counsel for New Jersey Republican State Committee (RSC). This was a challenge to television advertising expenditures of RSC in a publically financed gubernatorial campaign. Plaintiff argued the advertisements were coordinated with the gubernatorial candidate, and therefore should be considered expenditures of the gubernatorial candidate. If plaintiff's contentions were correct, defendant would have exceeded the maximum amount of expenditures permitted under the applicable statutes. Whitman for Governor and RSC prevailed based on the facts presented.

Date: October, 1997

Judge: Solomon A. Metzger, ALJ
New Jersey Office of Administrative Law

Co-Counsel: Samuel Destito, Esq.
Windels Marx Lane & Mittendorf, LLP
104 Carnegie Center
Suite 201
Princeton, NJ 08540
609-720-0005
Attorney for Christine Todd Whitman

Adversary: Angelo Genova, Esq.
Genova, Burns, Trimboli & Vernoia
354 Eisenhower Parkway
Livingston, NJ 07039
973-533-0777
Attorney for Democratic State Committee

Paul Josephson, Esq.
Department of Law and Public Safety
Division of Law
P.O. Box 112
Trenton, New Jersey 08625
609-292-4965
Attorney for James McGreevey

5. In Re Holmes, 346 N.J. Super. 372 (App. Div. 2002). Trial counsel for a republican township candidate who sought to have 19 absentee ballots counted which were received after the deadline due to the anthrax contamination of the Hamilton postal center. Trial court denied relief and appellate court reversed, permitting the opening and counting of the ballots.

Date: January 14, 2002

Judge: The Hon. Linda Feinberg, A.J.S.C.
Superior Court of New Jersey
Law Division
Mercer County

Adversaries: Mark T. Holmes, DAG
Division of Law
R.J. Hughes Justice Complex
25 West Market Street
CN 112
Trenton, NJ 08625
609-292-8036
Attorney for Mercer County Board of Elections

Arthur Sypek, Jr.
Teich Groh Frost & Zindler
691 Route 33
Trenton, NJ 08619
890-1500
Attorney for Lawrence Township Democratic Candidates

6. Franks for Governor, Inc. v. Schundler and the New Jersey Scholarship Fund, 2001 WL 6708441 (June, 2001). Represented Franks for Governor in an effort to have the cost of advertising by the New Jersey Scholarship Fund applied against Schundler's expenditure cap for publicly financed campaign. Defendants prevailed. The case stands for the proposition that coordination of advertising with a third party prior to January 1 of a gubernatorial year does not constitute an expenditure by the gubernatorial candidate of a contribution by the third party.

Date: June 5, 2001

Judge: Hon. Robert W. Scott, State of New Jersey, Office of Administrative Law,
presided and referred it back to the New Jersey Election Law Enforcement
Commission

Adversary: Brian McAlinden, Esq.
 Wilson Elser Moskowitz Edelman & Dicker, LLP
 33 Washington Street
 Newark, NJ 07102
 973-624-0800
 Attorney for Brett Schundler

James Bopp, Jr., Esq.
 Webster, Chamberlain & Bean
 Suite 1000
 1747 Pennsylvania Avenue N.W.
 Washington, DC 20006
 Telephone: 202-785-9500

Attorney for New Jersey Scholarship Fund

7. Atlantic City Casino Association v. Feather O'Connor, Treasurer State of New Jersey and Greenwood Development, Superior Court of New Jersey, Appellate Division, Docket No. A-452-86-T6. (Unreported case). This matter involved whether state regulators could be limited in the amount of expenses that could be assessed against casino control fund. More specifically, whether the states could enter a long term real estate lease on behalf of the casino control commission and the Division of Gaming Enforcement wherein the State would share its profits. The court ruled that the state had broad base discretion in the type of expenditures it would assess against the Casino Control Fund in order to effectuate the purposes of the Casino Control Act which included Redevelopment of Atlantic City.

Date: 1986

Judge: Hon. Richard R. Williams, J.S.C.

Adversary: Nicholas Katzenbach, Esq.
 (former Attorney General of the United States)
 33 Greenhouse Drive
 Princeton, New Jersey 08540
 924-8536

8. Democratic State Committee v. Lonna Hooks, United States District Court, District of New Jersey, Civil Action No. 96-4675 (MTB). Represented intervenors Dick Zimmer and the Passaic County Republican Committee. The issue was whether the State had adequate procedures to permit voting by persons who moved from one voting district to another within the same county. This matter established procedure for processing provisional ballots after enactment of amendments to the Voting Rights Act.

Date: October, 1995

Judge: Maryanne Trump Barry, U.S.D.J.
District of New Jersey

Adversaries: Angelo Genova, Esq.
Genova, Burns, Trimboli & Vernoia
354 Eisenhower Parkway
Livingston, NJ 07039
973-533-0777
Attorney for Democratic State Committee

Donna Kelly, Sr. DAG.
Division of Law
R.J. Hughes Justice Complex
25 West Market Street
CN 112
Trenton, NJ 08625
609-292-9302
Attorney for State of New Jersey

9. New Jersey Democratic State Committee v. New Jersey Republican State Committee, United States District Court, District of New Jersey, Civil Action No. 81-3876 (DRD). Chief counsel for New Jersey Republican State Committee in an action alleging that republicans through their election day program, were attempting to infringe upon voting rights of Hispanics. The court ruled that since the election day program of the republicans was consistent with the statutory process, there was insufficient evidence of any lawful or discriminatory practices.

Date: October, 2002

Judge: Hon. Dickson R. Debevoise, U.S.D.J.
District of New Jersey

Adversary: Zulima V. Farber, Esq.
Lowenstein Sandler, PC
65 Livingston Avenue
Roseland, New Jersey 07068-1791
973-597-2352
Attorney for the Democratic State Committee

10. Schizophrenia Foundation of New Jersey v. Montgomery Township, 4 N.J. Tax 662 (1982), judgment rev'd, 6 N.J. Tax 439 (1984), on remand to, 6 N.J. Tax 594 (1984). Represented the Schizophrenia Foundation in asserting an exemption to real property taxation because of its philanthropic purposes. The court held that the sale of non-prescriptive medicines and vitamins which were not customary treatments for the illness disqualified the foundation from an exemption.

Date: 1984

Judge: Morton L. Greenberg, J.A.D.
New Jersey Tax Court

Adversary: G. Thomas Reynolds, Esq.
Mason Griffin & Pierson, P.C.
101 Poor Farm Road
Box 391
Princeton, NJ 08542
Attorney for Township of Montgomery

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Response: In addition to the matters listed in number 18 above, there are several other significant legal assignments of which I am particularly proud:

1. In 1994, as attorney for the Casino Association of New Jersey, I was chiefly responsible for drafting and negotiating omnibus bill which substantially revised the Casino Control Act. This bill contained many common sense reforms which benefitted both the industry and the regulators. With virtually no opposition, the bill was enacted in 1994.

2. Acting as Chief Counsel to the Passaic Valley Sewerage Commissioners (PVSC) (1994-2002) was a significant legal activity. PVSC is the fifth largest wastewater treatment facility in the country. It serves approximately two million residents of New Jersey including its largest cities. As you can imagine, it has a host of personnel, environmental, litigation and corporate issues in addition to its routine compliance issues like public bidding, sunshine provisions, public access to records and ethics laws.

While Chief Counsel to PVSC, I was responsible for the negotiation of a \$10 million environmental planning grant from the New Jersey Department of Environmental Protection to PVSC in order determine the best methodology for substantially reducing combined sewer overflows into the Passaic River and significantly upgrading the quality of water.

3. In 1987, I negotiated a transaction with the Port Authority of New York and New Jersey and State of New York wherein the State of New Jersey was paid about \$35-30 million due to a beneficial lease arrangement the State of New York had at the World Trade Center.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

The terms of the agreement between myself and Graham, Curtin & Sheridan with respect to the termination of my employment and the redemption of my stock interest in Graham, Curtin & Sheridan are contained in the Amended and Restated Bylaws of Graham, Curtin & Sheridan adopted June 1, 2001 (the "Bylaws"). Pursuant to Section 5.2a. of the Bylaws, in the event my employment with Graham, Curtin & Sheridan terminates for any reason prior to the end of a calendar year, I am entitled to receive base salary attributable to the period of time preceding my termination of employment. In addition, pursuant to Section 2A.3 of the Bylaws, upon my resignation, Graham, Curtin & Sheridan shall redeem 100% of such shareholder's stock interests.

I participate in a 401(k) plan sponsored by Graham, Curtin & Sheridan, and upon my resignation of employment, I will take a distribution and roll it over into an IRA.

Graham, Curtin & Sheridan also sponsors a defined benefit plan for certain eligible employees, but all current shareholders including myself who would otherwise be entitled to benefits from such defined benefit plan have waived benefits to the extent necessary to ensure that plan assets are sufficient to satisfy the benefits of eligible non-shareholder employee participants. In the event that, following satisfaction of benefits payable to eligible non-shareholder plan participants, plan assets remain available to pay some or all of the accrued benefit to eligible shareholder participants, such benefits will be payable in accordance with the plan commencing upon the attainment of age 62, or otherwise as provided in the plan. Upon resignation, I will release and relinquish any rights I may have in the plan.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

There are no categories of litigation or financial arrangements which clearly present conflicts of interests. However, due to my representation of the New Jersey Republican State Committee in the past, I would be particularly sensitive to potential conflicts in connection with matters involving partisan politics. As a matter of practice, I will follow the canons of judicial conduct, local rules and practice, and any advisory opinions in order to avoid actual or perceived conflicts or interest. In addition, I will seek the advice of the Chief Judge and the Clerk's office with regard to any question concerning a conflict of interest.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

See attached Financial Disclosure Report

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached Net Worth Statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

Yes. As Executive Director of the New Jersey Republican State Committee in 1993 and as General Counsel since that time, I have rendered either political or legal advice to candidates and party organizations on Federal, State and local level on an every day basis.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		93	606	Notes payable to banks-secured			0
U.S. Government securities-add schedule				Notes payable to banks-unsecured			0
Listed securities-add schedule		228	664	Notes payable to relatives			0
Unlisted securities-add schedule			0	Notes payable to others			0
Accounts and notes receivable:			0	Accounts and bills due		1	000
Due from relatives and friends			--	Unpaid income tax			0
Due from others			--	Other unpaid income and interest			0
Doubtful			--	Real estate mortgages payable-add schedule		589	000
Real estate owned-add schedule	1	100	000	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0				
Autos and other personal property		25	000				
Cash value-life insurance (Annuity)		35	044				
Other assets itemize: Valic Account (Spouse)		79	446				
401(K)		79	007				
				Total liabilities		590	000
				Net Worth	1	050	767
Total Assets	1	640	767	Total liabilities and net worth	1	640	767
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor			0	Are any assets pledged? (Add schedule) No			
On leases or contracts			0	Are you defendant in any suits or legal actions? No			
Legal Claims			0	Have you ever taken bankruptcy? No			
Provision for Federal Income Tax			0				
Other special debt			0				

Peter G. Sheridan

Real Estate Owned

Residence #1 \$550,000
 Princeton Junction, New Jersey
 (Appraisal 10/02 plus value of improvements since the appraisal)

Residence #2 \$550,000
 Spring Lake, New Jersey
 (Appraisal 10/02 plus value of improvements since the appraisal)

Securities

Dreyfus App. Fund	\$ 5,987
Janus Twenty Fund	10,283
ML Fund Growth	6,113
ML Large Cap Fund	7,529
ML S & P 500 Index	6,109
AVAYA	54
AT & T Wireless	997
Agere	52
Lucent	149
NCR	95
SBC Comm	16,123
ML Muni Bd Fund	24,459
Janis Small Cap	9,934
Lord Abbett Aff Fund	19,922
Lord Abbett Mid-Cap	9,933
Mass Invest. Grth Fund	21,639
ML Agg Bd Index	21,197
Pimco Total Rtn	47,578
Strong High Yield	11,523
Somerset Hills Bancorp	14,886
Pimco	2,901

Real Estate Mortgages

Countrywide (Princeton Junction)	294,000
Countrywide (Spring Lake)	295,000

AO-10 Rev. 1/2002		FINANCIAL DISCLOSURE REPORT Calendar Year 2002		Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)
1. Person Reporting (Last name, First name, Middle initial) Sheridan, Peter G	2. Court or Organization U.S.D.C. New Jersey	3. Date of Report 11/11/2003		
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 11/5/2003 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period 1/1/2002 to 11/1/2003		
7. Chambers or Office Address Graham, Curtin & Sheridan 50 West State St. Suite 1008 Trenton, New Jersey 08608	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____			
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.				

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ **NONE** - (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Trustee	Southern New Jersey Development Council
2. Trustee	Republican Leadership Council
3. Director	Graham, Curtin & Sheridan
4. Trustee	St. Peter's College

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ **NONE** - (No reportable agreements.)

DATE	PARTIES AND TERMS
1. See below.	

Pursuant to the bylaws of Graham, Curtin & Sheridan, upon resignation, the following will occur. (a) The firm shall redeem my stock; (b) assets from 401K will roll over into an IRA; and (c) my interest in a defined benefit plan will be released by me without compensation.

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

☐ **NONE** - (No reportable non-investment income.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1. 2001	Graham, Curtin & Sheridan	351,166
2. 2002	Graham, Curtin & Sheridan	370,840
3. 10/31/03	Graham, Curtin & Sheridan	228,280

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Sheridan, Peter G	11/11/2003

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

☐ **NONE** - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
4.	2003	West Windsor-Plainsboro School District (spouse)	
5.	2002	West Windsor-Plainsboro School District (spouse)	
6.	2001	West Windsor-Plainsboro School District (spouse)	
7.	2001	OR Document Management Services	65,865

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Sheridan, Peter G	Date of Report 11/11/2003
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IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ **NONE** - (No such reportable reimbursements.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>
1. Exempt		

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)☒ **NONE** - (No such reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. Exempt			

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)☒ **NONE** - (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			

FINANCIAL DISCLOSURE REPORT

Page 1 of 4

Name of Person Reporting

Sheridan, Peter G

Date of Report

11/11/2003

VII. INVESTMENTS and TRUSTS — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-J)	(2) Type (e.g. div. ret. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A- J)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1. Pimco Total Return Fund	A	Dividend	K	T					
2. Dreyfus App. Fund	A	Dividend	J	T					
3. ML S & P 500 Fund	A	Dividend	J	T					
4. CMA FUND	A	Dividend	J	T					
5. ML BANK DEP	A	Interest	J	T					
6. ML MUN BD FD	A	Interest	K	T					
7. SOMERSET HILLS BANCORP	A	None	J	T					
8. SBC COMMUNICATIONS	A	Dividend	K	T					
9. VAN KAMPEN AMERICAN	A	Dividend	J	T					
10. JANUS TWENTY	A	Dividend	K	T					
11. ML LARGE CAP VALUE FUND	A	Dividend	J	T					
12. ML FUNDAMENTAL GROWTH	A	Dividend	J	T					
13. AT&T WIRELESS	A	Dividend	J	T					
14. LUCENT TECH	A	Dividend	J	T					
15. NCR CORP	A	Dividend	J	T					
16. BERGER SMALL CAP VALUE INVESTOR FUND	A	Dividend	J	T					
17. DELAWARE GROUP TRUST FUND	A	Dividend	J	T					
18. LORD ABBOTT FUND	A	Dividend	J	T					

1. Income/Gain Codes:	A = \$1,000 or less (See Columns B1 and D4)	B = \$1,001-\$2,500	C = \$2,501-\$5,000	D = \$5,001-\$15,000	E = \$15,001-\$50,000
2. Value Codes:	F = \$50,001-\$100,000	G = \$100,001-\$1,000,000	H1 = \$1,000,001-\$5,000,000	H2 = More than \$5,000,000	
	J = \$15,000 or less (See Columns C1 and D3)	K = \$15,001-\$50,000	L = \$50,001-\$100,000	M = \$100,001-\$250,000	
	N = \$250,000-\$500,000	O = \$500,001-\$1,000,000	P1 = \$1,000,001-\$5,000,000	P2 = \$5,000,001-\$25,000,000	
	P3 = \$25,000,001-\$50,000,000		P4 = More than \$50,000,000		
3. Value Method Codes:	Q = Appraisal (See Column C2)	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT

Page 2 of 4

Name of Person Reporting
Sheridan, Peter GDate of Report
11/11/2003

VII. INVESTMENTS AND TRUSTS — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-F)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A- W)	(5) Identity of buyer/seller (if private transaction)
19. LORD ABBOTT MED CAP VALUE FUND	A	Dividend	J	T					
20. MASS INVESTOR GROWTH STOCK FUND	A	Dividend	K	T					
21. OPPENHEIMER INT'L GROWTH FUND	A	Dividend	J	T					
22. VAN KAMP GROWTH AND INC. FUND	A	Dividend	K	T					
23. ML AGGREGATE BOND INDEX FUND	A	Dividend	K	T					
24. STRONG HIGH YIELD BOND FUND	A	Dividend	J	T					
25. PIMCO PEA INNOVATION	A	Dividend	J	T					
26. THIRD FEDERAL SAVINGS	A	Interest	J	T					
27. FLEET BANK	A	Interest	K	T					
28. STOCK INDEX FUND	A	Dividend	J	T					
29. AIG FIXED INCOME ANNUITY	B	Interest	K	T					
30. DELAWARE GROUP TRUST FUND	A	Dividend	K	T					
31. MERCURY INT'L VALUE FUND CLI	A	Dividend	J	T					
32. OPPENHEIMER INT'L GROWTH FUND	A	Dividend	J	T					
33. VAN KAMPEN GROWTH & INC. FUND	A	Dividend	J	T					
34. JANUS SMALL CAP	A	Dividend	J	T					
35. ML GLOBAL TECH FUND	A	Dividend	J	T					
36. ALLIANCE PREM GROWTH	A	Dividend	J	T					

1. Income/Gain Codes:	A = \$1,000 or less (See Columns B1 and D4)	B = \$1,001-\$2,500	C = \$2,501-\$5,000	D = \$5,001-\$15,000	E = \$15,001-\$50,000
2. Value Codes:	F = \$50,001-\$100,000 (See Columns C1 and D3)	G = \$100,001-\$1,000,000	H1 = \$1,000,001-\$5,000,000	H2 = More than \$5,000,000	
	J = \$15,000 or less	K = \$15,001-\$50,000	L = \$50,001-\$100,000	M = \$100,001-\$250,000	
	N = \$250,001-\$500,000	O = \$500,001-\$1,000,000	P1 = \$1,000,001-\$5,000,000	P2 = \$5,000,001-\$25,000,000	
	P3 = \$25,000,001-\$50,000,000		P4 = \$More than \$50,000,000		
3. Value Method Codes:	Q = Appraisal (See Column C3)	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	

FINANCIAL DISCLOSURE REPORT

Page 3 of 4

Name of Person Reporting
Sheridan, Peter GDate of Report
11/11/2003

VII. INVESTMENTS and TRUSTS — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Amount Code 1 (A-J)	Type (e.g. div., rent, or int.)	Value Code 2 (I-P)	Value Method Code 3 (Q-W)	Type (e.g. buy, sell, merger, redemption)	Date: Month - Day	Value Code 2 (I-P)	Gain Code 1 (A- J)	Identity of buyer/seller (if private transaction)
37. MFS NEW DISCOV. FUND	A	Dividend	J	T					
38. MFS NEW DISCOV. FUND	A	Dividend	J	T					
39. ML CORE BOND VI	A	Dividend	J	T					
40. DAVIS NY VENTURE	A	Dividend	J	T					
41. ALLIANCE QUASAR	A	Dividend	J	T					
42. ALLIANCE TECH FUND	A	Dividend	J	T					
43. PUTNAM HEALTH SCIENCE	A	Dividend	J	T					
44. BLACKROCK LARGE CAP	A	Dividend	J	T					
45. MERCURY HW INT'L VALUE FUND	A	Dividend	J	T					
46. MERCURY HW INT'L VALUE FUND	A	Dividend	J	T					
47. MERCURY HW INT'L VALUE FUND	A	Dividend	J	T					
48. 401 K (Graham, Curtin & Sheridan) and Tax Deferred Annuity									
49. AM CENTURY INC. & GROWTH	A	Dividend	J	T					
50. DREYFUS A BONDS PLUS	A	Dividend	K	T					
51. DREYFUS S & P 500 STOCK IND.	A	Dividend	J	T					
52. JANUS TWENTY FUND	A	Dividend	J	T					
53. JANUS WORLDWIDE FUND	A	Dividend	J	T					
54. NEU BER GENESIS FUND	A	Dividend	J	T					

1. Income/Gain Codes:	A = \$1,000 or less (See Columns B1 and D4)	B = \$1,001-\$2,500 G = \$100,001-\$1,000,000	C = \$2,501-\$5,000 H1 = \$1,000,001-\$5,000,000	D = \$5,001-\$15,000 H2 = More than \$5,000,000	E = \$15,001-\$50,000
2. Value Codes:	F = \$50,001-\$100,000 (See Columns C1 and D3)	J = \$15,000 or less N = \$250,000-\$500,000 P3 = \$25,000,001-\$50,000,000	K = \$15,001-\$50,000 O = \$500,001-\$1,000,000	L = \$50,001-\$100,000 P1 = \$1,000,001-\$5,000,000 P4 = \$5,000,001-\$25,000,000	M = \$100,001-\$250,000 P2 = \$5,000,001-\$25,000,000
3. Value Method Codes:	Q = Appraisal (See Column C2)	R = Cost (Real Estate Only) U = Book Value	S = Assessment V = Other	T = Cash/Market W = Estimated	

FINANCIAL DISCLOSURE REPORT

Page 4 of 4

Name of Person Reporting
Sheridan, Peter GDate of Report
11/11/2003

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions.)

A. Description of Assets (including trust assets) Place "(OC)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-J)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (I-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A- J)	(5) Identify of buyer/seller (if private transaction)
55. STOCK INDEX FUND	A	Dividend	J	T					
56. AIG FIXED INCOME ANNUITY	B	Interest	K	T					

1. Income/Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less	B = \$1,001-\$2,500	C = \$2,501-\$5,000	D = \$5,001-\$15,000	E = \$15,001-\$50,000
	F = \$50,001-\$100,000	G = \$100,001-\$1,000,000	H1 = \$1,000,001-\$5,000,000	H2 = More than \$5,000,000	
2. Value Codes: (See Columns C1 and D3)	J = \$15,000 or less	K = \$15,001-\$50,000	L = \$50,001-\$100,000	M = \$100,001-\$250,000	
	N = \$250,000-\$500,000	O = \$500,001-\$1,000,000	P1 = \$1,000,001-\$5,000,000	P2 = \$5,000,001-\$25,000,000	
	P3 = \$25,000,001-\$50,000,000		P4 = More than \$50,000,000		
3. Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
	U = Book Value	V = Other	W = Testimonial		

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Sheridan, Peter G

Date of Report
11/11/2003

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

None. Back up documents will be provided upon request.

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Sheridan, Peter G

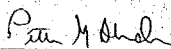
Date of Report
11/11/2003

IX. CERTIFICATION.

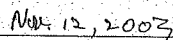
I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature



Date



NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have fulfilled requirements of canon 2 in two ways. First, I am very active with St. Peter's College in Jersey City, New Jersey. The college has traditionally served economically disadvantaged and minority populations. I spend approximately 4 hours per month on college related business. In addition, I volunteer with an organization known as Angel Wings which provides emergency shelter for children removed from their homes by the Division of Youth and Family Services (4 - 8 hours per month).

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no formal selection commission in New Jersey. The Senators organized an ad hoc committee of distinguished lawyers to interview candidates. Although the findings of the committee are confidential, I understand that the attorneys found me to be qualified. The only other interviews were conducted by the White House Counsel's Office for the President of the United States, the Federal Bureau of Investigation and the Department of Justice, Office of Legal Policy.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism." The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Although there are many aspects to rendering sound decisions, first and foremost, a Judge should be fair and impartial. To achieve this goal, there are several major guidelines which must be considered to decide a case or the reasonableness of a remedy. First is the development of a good factual record upon which all decisions in the case are made. It is essential that a judge have command of the facts. Beyond this, other factors include, but are not limited to, whether the parties are properly before the court, precedent set by the Supreme Court of the United States and the Third Circuit Court of Appeals (in my instance) as well as the law of the jurisdiction. In addition, the rules of statutory construction should be considered to determine legislative intent in appropriate circumstances. Utilizing the above criteria, the nature and scope of the remedy should logically fall into place.

Senator HATCH. Judge Wigenton?

**STATEMENT OF SUSAN DAVIS WIGENTON, NOMINEE TO BE
DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY**

Judge WIGENTON. Thank you, Senator Hatch. It is a pleasure and honor for me to be here today, and I do want to express my deepest gratitude to the Committee and all the members of the Committee for their patience in just working with us very diligently to arrive at this particular point.

Also, I want to extend my gratitude to the President for this nomination, in addition to the Administrative Office, who is also here, and they have also worked with each and every one of us to get to this point.

But I am happy to introduce the members of my family that I have brought here today, and I consider all of them to be members of my family.

First and foremost, I have my wonderful husband, Kevin, and my son, Kevin II.

Senator HATCH. That is great. He looks pretty good. That is great.

Judge WIGENTON. He is a big 3½-year-old.

Senator HATCH. Yes.

Judge WIGENTON. In addition, I have my oldest brother, Dr. Henry P. Davis, and his wife, Weptanomah Davis.

Senator HATCH. Doctor, an honor to have both of you here.

Judge WIGENTON. And my niece and nephew, their children, Lilybelle and Henry.

Senator HATCH. Great to have you here. Henry, you are looking good, too.

Judge WIGENTON. I also have my aunt and uncle, my Aunt Mesie, Aunt Mesie Wright, and Clarence Wright, who are members or residents of Maryland, and they are here as well.

Senator HATCH. Great to have you folks here.

Judge WIGENTON. In addition, I have members of my office and my chambers who I consider to be family members. I have my courtroom deputy, Ellen McMurray.

Senator HATCH. Good to have you here.

Judge WIGENTON. My able law clerk, Frances Bajada.

Senator HATCH. Great to see you, Frances.

Judge WIGENTON. And Wayne Fang, who will be leaving me this year, but he has been a wonderful law clerk.

Senator HATCH. Wayne, proud of you.

Judge WIGENTON. And last, but not least, I have Attorney Bobby Stafford, who is a member of the bar in the State of Virginia and also practices in the District as well, and he is here.

Senator HATCH. Great. Good to have you here.

Judge WIGENTON. And once again, thank you.

[The biographical information of Susan Wigenton follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Susan Davis Wigenton (f/k/a Susan Dianne Davis)

2. Address: List current place of residence and office address(es).

Residence: Colts Neck, NJ

Office: 50 Walnut Street, Courtroom 2-D, Newark, NJ 07101

3. Date and place of birth.

October 12, 1962, Neptune, NJ

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Kevin Paige Wigenton, Attorney, Self-employed, 125 Harding Road, Red Bank, NJ

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

College of William & Mary, 8/84-5/87, Juris Doctor, 1987

Norfolk State University, 8/80-5/84, Bachelor of Arts, 1984

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

2000- Present- Administrative Office of the United States Courts-Magistrate Judge;
 1997-2000- Administrative Office of the United States Courts- Magistrate Judge (Part-time)
 1997-2000- Susan D. Davis, Attorney At Law- Solo Practitioner;
 1988-1997- Giordano, Halleran & Ciesla, P.C.- Attorney;
 1989-1993- Asbury Park Municipal Court- Public Defender;
 1987-1988- The Honorable Lawrence M. Lawson, J.S.C.- Law clerk
 1985-1987- Binns Clothing Store-Williamsburg, VA- sales;
 1985-1986 (Summers only)- Philip Auerbach, Esq., law clerk;

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I have no military service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Woman of Distinction Award, Monmouth Council of Girl Scouts;
 Women Lawyers in Monmouth Achievement Award;
 Long Branch NAACP Presidential Award;
 Martin Luther King Champions for Social Justice and Equity Award;
 W.E.B. Dubois Citation for Merit;
 National Association for Educational Opportunity Distinguished Alumni Award;

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Federal Magistrate Judges Association;
 New Jersey State Bar Association;
 Monmouth County Bar Association;
 Association of Black Women Lawyers;
 Garden State Bar Association;
 National Bar Association;
 Historical Society of the Federal Courts;
 Federal Magistrate Judges Association Budget and Finance Committee;
 Civil Justice Reform Act Committee
 – Chair, 1995-1997; District IX Ethics Committee Chair, 1993-1995;

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Delta Sigma Theta Sorority, Inc. (Inactive member)

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States District Court for the District of New Jersey, 1987

State of New Jersey, 1987

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press

reports about the speech, and they are readily available to you, please supply them.

Home Care Industries v. Murray {154 F.Supp.2d 861 (D.N.J. 2001)};
Lusitania Savings Bank v. Progressive Casualty Ins. Co. {328 F.Supp.2d 514 (D.N.J. 2004)};
Gashlin v. The Prudential Ins. Co. Of America {286 F. Supp 2d 407 (D.N.J. 2003)};
McCabe v. Ernst & Young {221 F.R.D. 423 (D.N.J. 2004)};
Scott v. Board of Education of the City of East Orange {219 F.R.D. 333 (D.N.J. 2004)};
In Re Honeywell International, Inc. Securities Litigation {2003 U.S. Dist. LEXIS 20409};
Kounelis v. Sherrer {2005 WL 2675593 (D.N.J.)}.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

My health is excellent. My last physical examination was on June 20, 2005.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

United States Magistrate Judge (Part-time)-Appointed; 1997-2000; Presided over misdemeanor criminal and traffic matters that occurred on federal property/enclaves.

United States Magistrate Judge- Appointed;1997-Present; Civil matters and misdemeanor criminal matters, where consent is given.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Home Care Industries v. Murray {154 F.Supp.2d 861 (D.N.J. 2001)};
Lusitania Savings Bank v. Progressive Casualty Ins. Co. {328 F.Supp.2d 514 (D.N.J. 2004)}- affirmed July 2005 (Third Circuit);
Gashlin v. The Prudential Ins. Co. Of America {286 F. Supp 2d 407 (D.N.J. 2003)};
McCabe v. Ernst & Young {221 F.R.D. 423 (D.N.J. 2004)};

Scott v. Board of Education of the City of East Orange {219 F.R.D. 333 (D.N.J. 2004)};

In Re Honeywell International, Inc. Securities Litigation {2003 U.S. Dist. LEXIS 20409};

Kounelis v. Sherrer {2005 WL 2675593 (D.N.J.)}.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Other than judicial offices previously listed, I have held no public offices. I have never been a candidate for elective public office.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Lawrence M. Lawson, J.S.C., Monmouth County Superior Court;
1987-1988

2. whether you practiced alone, and if so, the addresses and dates;

Susan D. Davis, Attorney At Law; 39 Sycamore Ave., Little
Silver, NJ; 1997-2000

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Giordano, Halleran & Ciesla, P.C., 125 Half Mile Road,
Middletown, NJ; Associate(1988-1996)/Shareholder (1996-
1997);

Asbury Park Municipal Court, Asbury Park, NJ; 1989-1993;
Public Defender;

State of New Jersey Board of Bar Examiners; 1991-2000; Reader;

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Personal Injury and Civil Rights

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Private Citizens

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently

2. What percentage of these appearances was in:
- | | | |
|-----|-------------------------|------|
| (a) | federal courts: | 45%; |
| (b) | state courts of record: | 45% |
| (c) | other courts: | 10%. |

3. What percentage of your litigation was:
- | | | |
|-----|-----------|------|
| (a) | civil: | 90%; |
| (b) | criminal: | 10% |

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately five (5); Sole Counsel

5. What percentage of these trials was:
- | | | |
|-----|-----------|------|
| (a) | jury: | 100% |
| (b) | non-jury. | |

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- | | |
|-----|--|
| (a) | the date of representation; |
| (b) | the name of the court and the name of the judge or judges before |

- whom the case was litigated; and**
(c) the individual name, addresses, and telephone numbers of co-counsel
and of principal counsel for each of the other parties.

1. **Martin v. City of Trenton, et. als.**- Docket No.:97-3779;
(a). Date of representation- approximately 1991- 1993;
(b). Court- District Court of New Jersey; Honorable Garrett E. Brown, Jr.
(c). Adversary- Lyle P. Hough, Esq., City of Trenton, Department of Law, 319 East State Street, Trenton, NJ 08608; (609)989-3011;

I represented the plaintiff in this action who alleged excessive force and lack of medical treatment. Plaintiff sustained serious injuries, but liability was questionable. After a jury trial, we were successful in the litigation.

2. **Johnson v. Pan Am et. als.**- Docket Number unknown;
(a). Date of representation- approximately 1988-1993;
(b). Court- Multi-District Litigation (New York); Honorable Thomas Platt, Jr.;
(c). Co-counsel- Lee Kreindler (deceased), Kreindler & Kreindler, Park Ave., NY, NY (201) 343-7771;

I represented the family of a decedent that was killed on a flight over Lockerbie, Scotland. The disaster was the result of terrorist activities. The matter ultimately was settled.

3. **Fair v. McDonnell-Douglas, et. als.**- Docket No: 99-3607;
(a). Date of representation- approximately 1999;
(b). Court- District Court of New Jersey; Honorable Nicholas H. Politan
(c). Adversary- Thomas Curtin, 4 Headquarters Plaza, Morristown, NJ 07962; (973) 401-7117;

I represented the plaintiff, who worked for Federal Express (Fed Ex). While a non-revenue passenger on a flight, she sustained injuries when the flight caught fire upon landing. The case was settled regarding my client's injuries.

4. **Ruth (Lee) v. Borough of Keyport, et. als.**- Docket Number unknown;
(a). Date of representation- 1992 approximately;
(b). Court- Monmouth County Superior Court (NJ);
(c). Co-counsel - Norman M. Hobbie, 125 Wyckoff Rd., Eatontown, NJ 07724; (732) 380-1515;

I represented the Chief of Police of the Borough of Keyport, who was compelled to intervene in the *Ruth* action, as a result of a challenge Ruth brought against the civil service exam from which my client, Chief Lee, was appointed. After going to the appellate division, the matter ultimately was resolved by way of settlement, which included the retirement of my client, Chief Lee.

5. **Johnson v. Grand Marquis et. als.**- Docket number unknown;

- (a). Date of representation- 1993 approximately;
- (b). Court- Monmouth County Superior Court (NJ);
- (c). Co-counsel- Norman M. Hobbie, 125 Wyckoff Rd., Eatontown, NJ 07724;
(732) 380-1515;

I represented the plaintiff who alleged gender discrimination in her employment with the defendant. The matter was resolved by way of settlement.

6. **Ocasio v. Amtrak, et. als.** - Docket number unknown;

- (a). Date of representation- 1993-1996 approximately;
- (b). Court- Essex County Superior Court (NJ); Honorable ;
- (c). Co- counsel- Norman M.. Hobbie, 125 Wyckoff Rd., Eatontown, NJ 07724;
(732) 380-1515;

I represented the plaintiff who was comatose for more than three (3) years as a result of being struck by an Amtrak train. My co-counsel tried the case with the jury returning a verdict in excess of \$4 million. Defendants appealed, but prior to a ruling, the matter was resolved through settlement.

7. **Marshall v. Walmart**-settled prior to filing;

- (a). Date of representation - 2000;
- (b). Court - Not applicable;
- (c). Co-counsel- Norman M.. Hobbie, 125 Wyckoff Rd., Eatontown, NJ 07724;
(732) 380-1515;

I represented the plaintiff who was wrongfully accused of shoplifting. Thereafter, she was illegally strip-searched by employees of defendant. The matter was settled prior to filing.

8. **Bethune v. Pankey** - Docket number unknown;

- (a). Date of representation - 1998-2000;
- (b). Court - Monmouth County Superior Court (NJ);
- (c). Adversary - Drazin & Warshaw (Anthony Locascio), 25 Reckless Place, Red Bank, NJ 07701; (732) 747-33730;

I represented the defendant in this civil matter who was accused of assault. After a trial, the jury returned a verdict of "no cause", in favor of the defendant.

9. **Reid v. Pucci**- Docket number unknown;

- (a). Date of representation- 1996-1998;
- (b). Court- Supreme Court, Brooklyn, NY;
- (c). Co-counsel- Irving Fein, Fein & Jakab, 233 Broadway, Suite 930, NY, NY;
(212) 732-9290;

I represented the plaintiff in this action for extensive injuries sustained as a result of being struck by a vehicle when she was pedestrian. The matter was resolved by way of settlement.

10. **Stefanski v. Elks Lodge**- Docket number: MON-L- 2157-97;
(a). Date of representation- 1996-2000;
(b). Court- Monmouth County Superior Court (NJ);
(c). Co-counsel- Charles Cerussi, 130 Maple Ave., Red Bank, NJ 07701; (732) 936-9920

I represented a young boy that sustained lead poisoning while residing at property owned by the Elks Lodge. The matter was resolved through settlement.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Member, Education Facilities Authority- I served on this board for several years ensuring that the institutions of higher learning in the State of New Jersey were properly funded.

Special Ethics Master- Office of Attorney Ethics- I presided over matters where attorneys were accused of unethical conduct.

Reader- Board of Bar Examiners- I served as a Reader for the New Jersey Board of Bar Examiners from 1991-2000.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None Anticipated.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Any potential conflicts will be resolved as swiftly as possible. After ensuring that there are no existing conflicts as set forth on my financial disclosure, I will determine if there are any prior relationships with counsel, and upon advising all counsel and parties of same, I will recuse if I am unable to preside over the matter impartially. In all circumstances, I will comply with the Code of Conduct for United States Judges and all applicable statutes, guidelines and policies.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please see attached Financial Disclosure Statement.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Please see attached Financial Net Worth Statement

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

AO-10 (w)
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**
Nomination ReportReport required by the Ethics in
Government Act of 1978, as amended
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Wigenton, Susan D.		2. Court or Organization District of New Jersey	3. Date of Report 01/30/2006
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge- Nominee		5. Report Type (check type) X Nomination, Date 01/25/2006 Initial Annual Final	6. Reporting Period 01/01/2005 to 12/31/2005
7. Chambers or Office Address 50 Walnut Street, Room 2037 Post Office Box 999 Newark, New Jersey 07101-0999		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.			

I. POSITIONS (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Trustee	St. Paul Baptist Church
2	
3	

II. AGREEMENTS (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 11/1997	Giordano, Halleran & Ciesla, P.C. - Share in contingent fees of personal injury matters.
2 4/2000	Hobbie, Corrigan, Bertuccio & Tashjy, P.C. - Share in contingent fees of personal injury matters referred as a result of closed practice.
3	

III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 2004	Susan D. Davis, Attorney At Law (INACTIVE)	\$30,000
2 2005/6	IIIB. Spouse> Self-employed (Attorney At Law)	N/A
3		
4		

FINANCIAL DISCLOSURE REPORT

Wigenton, Susan D.

DATE OF REPORT
01/30/2006

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	Exempt		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	Commerce Bank	Mortgage on Rental properties (1 & 2) (Part VII, lines 1 and 2).	N
2	National City Mortgage	Mortgage on Office Building (Part VII, line 3)	N
3			
4			
5			
6			

* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Wigenton, Susan D.

Date of Report
01/30/2006

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
<i>Place "X" after each asset exempt from prior disclosure.</i>						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Rental Property #1, Red Bank, NJ (1995-\$63,000)	D	Rent	N	R	Exempt				
2 Rental Property #2, Eatontown, NJ (1989-\$137,000)	D	Rent	N	R					
3 Office Building, Red Bank, NJ (2000-\$255,000)		None	N	R					
4 Oppenheimer Main Street Income & Growth Fund A	A	Dividend	J	T					
5 Fidelity Destiny Plans II	A	Dividend	K	T					
6 Fidelity Destiny Plans (2)	A	Dividend	J	T					
7 RBB/Bedford Money Market Fund	A	Dividend	J	T					
8 State Street Research Mutual Funds	B	Dividend	K	T					
9 Fortis Masters Variable Annuity	D	Dividend	M	T					
10 Microsoft Common Stock	A	Dividend	J	T					
11 Cisco Common Stock		None	J	T					
12 Chesapeake Utilities Common Stock	A	Dividend	J	T					
13 Kellogg Company Common Stock	A	Dividend	J	T					
14 Dow Chemical Company Common Stock	A	Dividend	J	T					
15 New Century Energy Common Stock	A	Dividend	J	T					
16 Houghton Mifflin Company Common Stock	A	Dividend	J	T					
17 American Water Works Common Stock	A	Dividend	J	T					
1 No/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

FINANCIAL DISCLOSURE REPORT

Name of filer reporting
Wigenton, Susan D.Date of report
01/30/2006VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets) <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
18 A B Volvo Common Stock	A	Dividend	J	T					
19 Exxon Mobil Corporation Common Stock	A	Dividend	J	T					
20 Synovus Financial Common Stock	A	Dividend	J	T					
21 Diebold Incorporated Common Stock	A	Dividend	J	T					
22 Deere and Company Common Stock	A	Dividend	J	T					
23 The Quaker Oats Company Common Stock	A	Dividend	J	T					
24 Newell Rubbermaid Common Stock	A	Dividend	J	T					
25 Wells Fargo Common Stock	A	Dividend	J	T					
26 PNC Capital Inc., Common Stock	A	Dividend	J	T					
27 People's Energy Common Stock	A	Dividend	J	T					
28 Wendy's International Common Stock	A	Dividend	J	T					
29 Charles Schwab Common Stock	A	Dividend	J	T					
30 American General Corporation Common Stock	A	Dividend	J	T					
31 Colgate-Palmolive Common Stock	A	Dividend	J	T					
32 Lincoln National Corporation Common Stock	A	Dividend	J	T					
33 Oneok Incorporated Common Stock	A	Dividend	J	T					
34 Xcel Energy Inc., Common Stock	A	Dividend	J	T					
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$500,001 or more 3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

FINANCIAL DISCLOSURE REPORT

NAME OF PERSON REPORTING
Wigenton, Susan D.

Date of Report
01/30/2006

VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<div>NONE (No reportable income/assets, or transactions.)</div>									
35 Intel Corporation	A	Dividend	J	T					
36 Maytag Corporation	A	Dividend	J	T					
37 GTE Corporation	A	Dividend	J	T					
38 Fifth Third Bancorp Common Stock	A	Dividend	J	T					
39 Kerr-McGee Corporation Common Stock	A	Dividend	J	T					
40 First Union Corporation Common Stock	A	Dividend	J	T					
41 Federal Realty Investment Common Stock	A	Dividend	J	T					
42 Sky Financial Group Common Stock	A	Dividend	J	T					
43 CFS Direct Inc., Common Stock	A	Dividend	J	T					
44 Dana Corporation	A	Dividend	J	T					
45 National Investor	D	Dividend	K	T					
46 Lucent Technologies (401K)	B	Dividend	M	T					
47 IBM Common Stock	A	Dividend	J	T					
48 Home Depot Common Stock	A	Dividend	K	T					
49 Time Warner Common Stock		None	K	T					
50 American Express Common Stock	A	Dividend	K	T					
51 Altria Group Common Stock	A	Dividend	K	T					
1 In/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
2 Val Codes: (Col. C1, D3) J=\$15,000 or less O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$500,001 or more									
3 Val Mth Codes: (Col. C2) Q=Appraisal U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

FINANCIAL DISCLOSURE REPORT

Wigenton, Susan D.

DATE OF REPORT
01/30/2006

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets) <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
52 General Electric Common Stock	A	Dividend	K	T					
53 Walt Disney Common Stock	A	Dividend	K	T					
54 XM Satellite Radio	A	Dividend	K	W					
55 Sirius Satellite Radio	A	Dividend	J	W					
56 Jet Blue Airlines	A	Dividend	J	W					
57 Rental Property #3, Red Bank, NJ (1999 - Inherited)	E	Rent	N	R					
58 X Merck & Co Common Stock	A	Dividend	J	T					
59 X Gillette Co. Common Stock	A	Dividend	J	T					
60 Ford Motor Co. Common Stock	A	Dividend	J	W					
61 AMR Common Stock	A	None	J	W					
62 US Bancorp	A	Dividend	K	W					
63 Taro Pharmaceutical	A	Dividend	J	W					
64 Hudson City Bancorp	A	Dividend	J	W					
65 Harken Energy	A	Dividend	J	W					
66 Investor's Savings		None	J	W					
67 NET 2 Auction, Inc.		None	J	W					
68 Toyota Motor Corp.		None	J	W					

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000	
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more	
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market			

FINANCIAL DISCLOSURE REPORT	Wigenton, Susan D.	01/30/2006
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

Part III, Line 1- references income from referred matters, upon taking the bench.

Part III, Line 1- Currently serving as a United States Magistrate Judge

FINANCIAL DISCLOSURE REPORT	Wigenton, Susan D.	01/30/2006
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IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Susan Wigenton Date January 30, 2006

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		35	000	Notes payable to banks-secured		950	000
U.S. Government securities-add schedule		10	000	Notes payable to banks-unsecured			
Listed securities-add schedule	1	004	000	Notes payable to relatives			
Unlisted securities-add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		885	000
Real estate owned-add schedule	2	650	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		150	000				
Cash value-life insurance		200	000				
Other assets itemize:							
				Total liabilities	1	835	000
				Net Worth	2	214	000
Total Assets	4	049	000	Total liabilities and net worth	4	049	000
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

U.S. Government Securities

Treasury Bonds	\$ 10,000
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Listed Securities

See AO-10, Financial Disclosure Report	\$
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Total Listed Securities	<u>\$1,004,000</u>
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Real Estate Owned

Personal residence	\$ 1,350,000
Rental property 1	300,000
Rental property 2	280,000
Rental property 3	270,000
Business property	<u>450,000</u>
Total Real Estate Owned	<u>\$ 2,650,000</u>

Real Estate Mortgages Payable

Personal residence	\$ 500,000
Rental property 2	100,000
Rental property 3	125,000
Business property	<u>160,000</u>
Total Real Estate Mortgages Payable	<u>\$ 885,000</u>

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Although I've been on the bench for the last eight years, I have still maintained my commitment to young people. I volunteer in church on a weekly basis by helping them with educational plans. Previously, in private practice, I served as a Special Ethics Master for the Office of Attorney Ethics in addition to handling matters on a *pro bono* basis.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No, I have never held membership in any such organization.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is a selection panel in the District of New Jersey. I was selected to be interviewed by the panel after submitting my resume. Subsequent to my interview, the panel recommended me for an interview with the New Jersey State Senators, Corzine and Lautenberg. I traveled to Washington, D.C. to interview with the Senators. Thereafter, the Senators referred me to the White House for an interview with the staff from the White House Counsel's office and the Department of Justice. Several months later, I received a telephone call from the White House Counsel's office, informing me that I had been tentatively selected as a nominee. After completing all nomination paperwork and a background investigation, my nomination was forwarded to the Senate on January 25, 2006. I felt the process was professional and respectful at all times.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

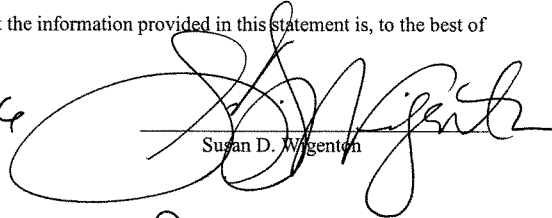
- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I do not intend to serve as a judicial activist, but to interpret the constitution and the laws before me. I will refrain from imposing my office on other institutions and will not engage in overreaching. I will respect the fact that there is a separation of powers between the judiciary and the legislature. The court that I will preside over has limited jurisdiction over cases and controversies before it. I will be bound by legal precedent and stare decisis.


AFFIDAVIT

I, Susan D. Wigenton do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

February 27, 2006
DATE



Susan D. Wigenton



(NOTARY)
FRANCES C. ZARITSA
ATTORNEY AT LAW
STATE OF NEW JERSEY

Senator HATCH. Well, thank you. Well, we are honored to have all of you here. The questionnaires are so extensive that I almost think it is an insult for us to ask you any further questions, and especially since we know of your reputations, know how really qualified you folks are. We appreciate you appearing, and I am going to make this easy on you. We are just going to congratulate you, and we will move as fast as we can your nominations. And just serve well on the bench and remember what I said. The closest thing to godhood in this life is a Federal judgeship, and we just don't want you to take that to heart that strongly. What we would like you to do is just give service the way Federal judges ought to do and be fair and honest and decent to everybody who comes before you—and, above all, those poor humble attorneys who have to appear. They do not particularly want you to try their cases for them, but when you see a young person who is struggling in the evidence or something, you can give a little help.

[Laughter.]

Senator HATCH. There is nothing wrong with that.

But we are honored to have all of you here. We are honored to have your family members here, clearly good people, and the courts are going to be better off with the four of you on that court.

So, with that, we are going to recess this hearing until further notice and congratulate all of you, and we will do our best to get you through as quickly as possible.

Ms. BUMB. Thank you, Senator.

Mr. HILLMAN. Thank you, Senator.

Mr. SHERIDAN. Thank you, Senator.

Judge WIGENTON. Thank you, Senator.

Senator HATCH. Thank you so much. Good to see you.

[Whereupon, at 2:54 p.m., the Committee was adjourned.]

**NOMINATIONS OF SANDRA SEGAL IKUTA, OF
CALIFORNIA, TO BE CIRCUIT JUDGE FOR
THE NINTH CIRCUIT; SEAN F. COX, OF
MICHIGAN, TO BE DISTRICT JUDGE FOR
THE EASTERN DISTRICT OF MICHIGAN;
THOMAS L. LUDINGTON, OF MICHIGAN, TO
BE DISTRICT JUDGE FOR THE EASTERN
DISTRICT OF MICHIGAN; AND KENNETH L.
WAINSTEIN, OF VIRGINIA, TO BE ASSISTANT
ATTORNEY GENERAL, NATIONAL SECURITY
DIVISION, DEPARTMENT OF JUSTICE**

TUESDAY, MAY 2, 2006

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 3:06 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Sam Brownback presiding.

Present: Senators Brownback and Feingold.

**OPENING STATEMENT OF HON. SAM BROWNBACK, A U.S.
SENATOR FROM THE STATE OF KANSAS**

Senator BROWNBACK. The hearing will come to order. Thank you for being here and joining us today. A vote has just been announced. We have a hearing on four nominations—Sandra Segal Ikuta, Sean F. Cox, Thomas Ludington, and Kenneth Wainstein.

What I thought I would do here is offer to Senator Levin and Stabenow, if you want, before we head over to vote, to make your introductory statements and comments. Then I will have to recess and go vote and then come back and we will finish.

Delegate Norton, I hope that can work for you, but I have to take care of my colleagues first here. I am sorry about that.

Senator Levin, do you want to go forward with your statement?

PRESENTATION OF SEAN F. COX, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN, AND THOMAS L. LUDINGTON, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN, BY HON. CARL LEVIN, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator LEVIN. Thank you, Mr. Chairman, for your accommodation, as always. There is no one who is more accommodating in the U.S. Senate than Senator Sam Brownback and we really very much appreciate it. I want to thank you and the Committee for holding this hearing today. Both Senator Stabenow and I are pleased to introduce two Michigan jurists, Tom Ludington and Sean Cox, whom the President has nominated to the Federal bench in the Eastern District of Michigan.

I will let Judge Ludington introduce his family—I think it is always a special privilege of the nominee to do that—although it is tempting to do that, other than to say that his sons have made the ultimate sacrifice here, which is to miss a day in school to be with their father.

He is indeed a well-respected jurist in Michigan. He currently serves as a circuit court judge. He is the chief judge in his circuit, in Midland County, Michigan. He has been in private practice a long time before that. He was elected to the bench in 1995.

I also, in addition to Judge Ludington, would like to join Senator Stabenow in welcoming Judge Sean Cox and his family, whom I know he will also introduce. Judge Cox and Judge Ludington both got high grades from the American Bar Association, as well as from the screening group that Senator Stabenow and I set up to look at the nominations of the President and to review them. Both of the nominees here today did very well with that group and we got very positive feedback about both of them.

I shouldn't introduce Sean Cox by mentioning that his brother is the Attorney General of the State of Michigan, but since I am big on brothers, and I know that he is, too, I do want to mention it. I know how proud the family is of both of them.

I shouldn't take 30 seconds to say this, but when my mother was asked what about the two Levin brothers that were now elected to the Senate and to the House, respectively, when we both were here, and the press was pressing her for, well, you must be just so proud of your two sons, now a sibling act in the House and the Senate, her response was if that is what they want, it is OK with me.

Their prompt confirmation is something we all look forward to, and again we thank you very much, Mr. Chairman, for holding this hearing and for dividing it the way you are to accommodate us.

Senator BROWNBACK. A ringing endorsement from mom. That is a great story.

Senator Stabenow.

PRESENTATION OF SEAN F. COX, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN, AND THOMAS L. LUDINGTON, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN, BY HON. DEBBIE A. STABENOW, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator STABENOW. Well, thank you, Senator Brownback. I, too, am here to join in strong support of the nominations of Judge Sean Cox and Judge Tom Ludington for the U.S. District Court for the Eastern District of Michigan.

I don't have a brother or a sister serving, but I am someone who believes strongly in family, as does everybody here. And to look around at these two families, it is really wonderful to see, and I know that their wives and children and relatives are all very proud of them and are very exciting about being here today and about the opportunities that all of this presents.

Both of these nominees bring distinguished legal careers and judicial experience to the Federal bench. Judge Sean Cox has served as a circuit court judge for the 3rd Circuit of Michigan since 1996. He is a graduate of the Detroit College of Law and the University of Michigan, and has over 12 years of private practice experience. So I want to welcome Judge Cox and his family to the Senate today.

Judge Thomas Ludington has served on the 42nd Circuit Court for Midland County since 1995. He has served as chief judge of the court for the past 6 years. Judge Ludington is a graduate of the University of San Diego School of Law and Albion College, another great school in Michigan.

After graduating from law school, Judge Ludington worked at the Currie and Kendall law firm for 14 years, and also served as president of the firm before he left to join the Michigan Circuit Court. I want to welcome Judge Ludington and his family, as well, today.

We very much appreciate the timely manner in which these nominations have moved forward now and expect the same timeliness on the floor. It is my pleasure to work with you on these vacancies and other judicial issues coming before us that affect Michigan.

Thank you, Mr. Chairman.

Senator BROWNBACK. Thank you very much, Senator. I appreciate that greatly.

Representative Norton, I do have time if you would like to go ahead and put your statement in now before I have to head off and vote, if that would facilitate you as well.

Senator LEVIN. Can we be excused?

Senator BROWNBACK. Yes, you will be excused. Thank you very much for coming by. I appreciate it greatly.

**PRESENTATION OF KENNETH L. WAINSTEIN, OF VIRGINIA,
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, NA-
TIONAL SECURITY DIVISION, DEPARTMENT OF JUSTICE, BY
HON. ELEANOR HOLMES NORTON, A DELEGATE IN CON-
GRESS FROM THE DISTRICT OF COLUMBIA**

Delegate NORTON. Let me make haste and thank you, Senator Brownback. I am pleased to come forward and recommend Kenneth Wainstein to this new and important position. He is going to be the maiden, or whatever it should be called in his case, person to hold this position of Assistant Attorney General for National Security. It was strongly recommended by the commission, bringing together the counterterrorism, counter-espionage and similar attorneys under one new person.

I know Ken Wainstein from his work as U.S. Attorney for the District of Columbia, but if you take a look at his combined Federal and local career and prosecutorial experience, you can understand, it seems to me, immediately why the President selected him for this new post-9/11, very important position.

I simply want to say how much I appreciate the way Ken Wainstein adapted himself to the unique demands of the U.S. Attorney's office for the District of Columbia. It is a unique office and its combination of Federal and local responsibilities, I think, will serve him well in his new position, considering that that position will require him to be in tune with cases that are as likely to arise from local conditions as from the Federal itself.

Just as he will have to make adaptations and indeed clear the way entirely for his new position, he adapted to the way in which we were trying to make the U.S. Attorney's Office for the District of Columbia. It handled twice as many local cases as Federal cases, because he is really a local D.A. for the District of Columbia, as well as the U.S. Attorney.

Those who held the position before him—Eric Holder, who later became Deputy Attorney General, and Wilma Lewis, both the first African Americans to hold the position, and Wilma Lewis the first woman—made the position, in fact, much more like a D.A. position while handling all of these important Federal matters. And Ken Wainstein just went right to it, expanded the Federal involvement appropriately even as he was handling very important cases of the kind that I am sure brought him to the attention of the President for this new position. He was interim U.S. Attorney twice; the second time around, he made it to the top.

I think you can see this a clear merit appointment, a man who has never been in politics. He has been in the Justice Department all his life. He was chief of staff for FBI Director Mueller, Executive Director of the Executive Office of U.S. Attorneys, D.C. and New York experience. He leaves with the homicide rate this year down 17 percent in the District of Columbia. I am sorry to lose him right at the time when he and I were working together to get a new forensic lab—I will have more to say to you in your other hat about that, Mr. Brownback—and where we are working to get for the U.S. Attorney for the District of Columbia investigators, instead of using our cops, the way every other U.S. Attorney has. It is your gain and our loss. I am pleased to recommend the President's recommendation to you.

Thank you very much for taking me.

Senator BROWNBAC. Thank you very much, Delegate Norton. We appreciate that greatly.

I also want to recognize Congressman Dave Camp from Michigan, who is here, I am sure, to support both of these nominees.

If you have a statement you wanted to put forward, I am going to have to run in 1 minute. I apologize for that.

PRESENTATION OF SEAN F. COX, OF MICHIGAN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN, AND THOMAS L. LUDINGTON, OF MICHIGAN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN, BY HON. DAVE CAMP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Representative CAMP. Well, thank you very much, Senator Brownback. I just want to endorse the remarks of Senator Levin and Senator Stabenow to these two exceptionally well-qualified judges from Michigan.

Judge Ludington and I grew up together. We live in the same hometown and when I am home and run into lawyers from every political stripe and perspective, they all say what an excellent job he does as a judge. And I know they both will serve this country well as district court judges.

Thank you.

Senator BROWNBAC. Thank you very much.

We will put the hearing in recess while I go vote and I will be right back. I want to apologize to the nominees and the families. I just can't avoid it. I have to run over and vote and I will be back as quickly as I can.

We are in recess.

[The Committee stood in recess from 3:17 p.m. to 3:36 p.m.]

Senator BROWNBAC. The hearing will come back to order. Thank you all for joining me and I am sorry about the delay.

I want to call the panel up of our judicial nominees and we will do the executive branch nominee on a second panel. So if you would all care to come on forward, I will do an introduction here at this time.

Our first nominee who will be making a presentation will be Sandra Segal Ikuta, who has been nominated to serve on the Ninth Circuit Court of Appeals. She graduated Phi Beta Kappa from the University of California-Berkeley, received her master's degree at Columbia University Graduate School of Journalism, and received her J.D. from UCLA Law School.

After law school, she clerked for Judge Alex Kozinski. I am sure I butchered that. I apologize.

How do I say that?

Ms. IKUTA. Kozinski.

Senator BROWNBAC. Kozinski. That ought to be much simpler. It is the German in me that just doesn't get those names right.

She clerked for Judge Kozinski on the Ninth Circuit Court of Appeals and then for Justice Sandra Day O'Connor on the U.S. Supreme Court. She then entered private practice where she worked for 14 years in the law firm of O'Melveny and Myers. Ms. Ikuta specialized in environmental issues, including litigation, compli-

ance and other pre-litigation matters, including assisting clients with environmental audits and property contamination issues. In 1997, she was promoted to partner at the law firm and she became co-chairman of the environmental law practice group.

Ms. Ikuta left the law firm in 2004 to become Deputy Secretary and General Counsel for the California Resources Agency, where she currently serves. She is responsible for general legal matters for the agency. She received a unanimous well qualified rating from the ABA.

Sean F. Cox is our next nominee. Judge Cox has been nominated to the Federal District Court for the Eastern District of Michigan. He is a graduate of the University of Michigan and Detroit College of Law. Judge Cox has an extensive record of legal experience. He was in private practice with three law firms between 1984 and 1996, where he had a diverse practice representing governmental entities, insurance companies and individual litigants in complex litigation. Since 1996, he has served with distinction on the 3rd Circuit Court for the State of Michigan and he, as well, has received a unanimous well qualified rating by the ABA.

Judge Thomas L. Ludington has been nominated to the Federal District for the Eastern District of Michigan. He is a graduate of Albion College and the University of San Diego School of Law. He spent 14 years in private practice. During that time, Judge Ludington dedicated much of his work in the area of banking and securities law, as well as bankruptcy and employment law. He also served as president of the firm for 6 years.

In 1995, he began his judicial service by taking a seat on the State of Michigan's 42nd Circuit Court. Since 1999, he has served as chief judge of that court, where he has become a widely respected trial judge. Like our other nominees, Judge Ludington was rated unanimously well qualified by the American Bar Association.

This is an outstanding group of nominees. We have had testimony already entered by two members of the Senate, a Representative from the House, and the Delegate from the District of Columbia on our executive nomination.

I would like to also enter into the record at this point in time a statement from Senator George Allen and a statement from Senator John Warner in support of the nomination of Kenneth L. Wainstein for Assistant Attorney General for National Security. Welcome, all of you nominees. I want to welcome your families, as well, to this hearing about your nominations for the bench.

Ms. Ikuta, I look forward to your testimony. If you would like to introduce family, you are welcome to do so now and we will hear your testimony.

**STATEMENT OF SANDRA SEGAL IKUTA, NOMINEE TO BE
CIRCUIT JUDGE FOR THE NINTH CIRCUIT**

Ms. IKUTA. Thank you, Senator. I would like to introduce my husband, Ed Ikuta, and my daughter, Lillian Ikuta.

Senator BROWNBACK. Welcome. We are delighted to have you here.

Ms. IKUTA. They have been such a wonderful support to me.
[The biographical information of Ms. Ikuta follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Sandra Segal Ikuta
formerly Sandra Caroline Segal.

2. Address: List current place of residence and office address(es).

Residence: Sacramento, California
Office: California Resources Agency
1416 Ninth Street, Sacramento
California 95814

3. Date and place of birth.

June 24, 1954, Los Angeles, California

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Edward D. Ikuta, self-employed photographer.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

8/85-5/88 UCLA Law School, JD, 5/88
9/77-5/78 Columbia University Graduate School of Journalism, MS, 5/78
9/74-6/76 University of California, Berkeley, AB, 6/76
9/72-6/74 Stanford University (transferred to UC Berkeley)
9/71-6/72 University of California, Los Angeles (attended part time while in high school)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

March 2004 to present:	California Resources Agency (Deputy Secretary and General Counsel)
April 2004 to present:	Pacific Forest and Watershed Lands Stewardship Council (alternate director)
November 1990 – February 2004:	O'Melveny & Myers LLP (associate, 11/90-1/97; partner 2/97-2/04)
July 1989 – July 1990:	Supreme Court of the United States (law clerk to Justice Sandra Day O'Connor)
June 1988 – June 1989:	U.S. Court of Appeals for the Ninth Circuit (law clerk to Judge Alex Kozinski)
June 1987-August 1987:	Mitchell, Silberberg & Knupp (summer associate)
August 1985-August 1986:	Alschuler, Grossman & Pines (summer associate and part-time library clerk)
June 1984-August 1985:	Disney Channel Magazine (associate editor and copywriter)
June 1980-June 1984:	Unique Publications (editor)
October 1979-June 1980:	City National Bank (technical writer)
July 1978-August 1979:	Guilford Press (assistant editor)
November 1976-August 1977:	University of California, Berkeley (research assistant)

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I have not had any military service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

UC Berkeley - National Merit Scholar, Phi Beta Kappa

UCLA Law School - Order of the Coif, Graduate Woman of the Year

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Los Angeles County Bar, Chair, Environmental Section, 2001-2002.

I served as a member of the Executive Committee of the Environmental Section from 1993 through 2003, and served in many different positions, including Secretary, Treasurer, and Vice President.

American Bar Association, Membership Chair, International Environmental Law Section, 2003.

California Bar Association

Milton L. Schwartz Inn of Court

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I do not belong to any organizations that are active in lobbying before public bodies.

I belong to the following organizations:

West Los Angeles United Methodist Church

Park Terrace Swimming & Tennis Club (small neighborhood club with swim team for children 18 and under)

Pacific Forest and Watershed Lands Stewardship Council

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

California state courts, February 1991.

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have authored or co-authored the following published articles:

1. Costly Stormwater Requirements Imposed on New Los Angeles County and Long Beach Developments (S. Ikuta; May, 2000), OMM Executive Brief.
2. New Water Discharge Rules May Add to Businesses' Total Maximum Daily Load of Regulations (TMDL's) (S. Walter, S. Ikuta, J. Nowotny, December, 1999), OMM Executive Brief.
3. Establishing Defenses to Parent Liability for Subsidiary Pollution: United States v. Bestfoods (Sandra Ikuta, 1999, 7th Edition), OMM Handbook for Corporate Officers, Selected SEC Rules.
4. U.S. Supreme Court Establishes New Rule for Parent Corporation Liability Under CERCLA (Bestfoods) (Sandra Ikuta, Paul Morris), October 26, 1998), OMM Executive Brief.
5. Avoiding Subsidiaries' CERCLA Problems-High Court Establishes New Rule for Parent Corp. Liability (Sandra Ikuta, Paul Morris, September 1998) Environmental Compliance & Litigation Strategy:
6. Can We Talk? The New Environmental Responsibility Acceptance Act (March 20, 1998), OMM Executive Brief.
7. Talk Policy (Sandra Ikuta, Stephanie Walter, March 9, 1998), California Law Business.
8. Important Changes to Federal and State Environmental Laws Regarding the Liability of Lenders and Fiduciaries (January 10, 1997), OMM Executive Brief.
9. Protecting Environmental Reports (MCLE Self-Study) (Sandra Ikuta, Leslie Hakala, November 1996), California Lawyer.
10. Waiting to Inhale: The Impact of New OSHA Asbestos Regulations on California Building Owners (July 1996: Sandra Ikuta, Teresa Johnson), California Environmental Law and Regulation Reporter.
11. Unclean Hands. Environmental Law: The Expanding Net of Superfund Liability Can Ensnare Not Only Corporations but Also the Individuals Who Run Them (July 22, 1996), Business, California Law.
12. Cleaning House (April 1996): Pamela Westhoff, Sandra Ikuta. Real Estate Law.
13. Limited Potential. Combination of State, Federal Law Sets Cleanup Responsibility for Certain Partners (February 23, 1996: Peter Kelley, Sandra Ikuta), Los Angeles Daily Journal.
14. Buyer's Burden. Sellers of Contaminated Property May Impose Use Restrictions on Later Purchasers (January 26, 1996), Los Angeles Daily Journal.
15. Waste Treatment. Corporate Individuals Face CERCLA Liability as Transporters of Hazardous Substances (December 22, 1995), Los Angeles Daily Journal.

16. Pipe Dreams. A Treatment Facility's Attempt to Evade CERCLA Liability Goes Down the Drain (November 24, 1995), Los Angeles Daily Journal.
17. Parent Corporation Liability Under CERCLA; MCLE Self-Study (November 1995), California Lawyer (with Teresa Johnson)
18. Past Toxic Liabilities Can Haunt an Asset Purchase (October 30, 1995), Los Angeles Daily Journal.
19. Time Warp: When Does the Statute of Limitations Commence in Asbestos Abatement Cases? (September 22, 1995), Los Angeles Daily Journal.
20. Blame the Parents: Determining When a Parent Corporation Has Owner or Operator Liability Under CERCLA (August 25, 1995), Los Angeles Daily Journal.
21. No Hope of Recovery. How Recent Cases May Affect Property Owners Who Have Incurred Cleanup Costs (June 23, 1995), Los Angeles Daily Journal.
22. Leaks and Leases, When are Landlords Liable for Tenant-Created Environmental Hazards? (May 26, 1995), Los Angeles Daily Journal
23. RCRA Recovery: The 9th Circuit Provides Innocent Landowners with a Remedy (April, 1995), Los Angeles Daily Journal.
24. Lead Alert: Housing Market Faces Disclosure Regulations (February 24, 1995), Los Angeles Daily Journal.
25. State Legislature Made Modest Environmental Reforms in 1994 (January 27, 1995), Los Angeles Daily Journal.
26. Tenants May Avoid Cleanup Costs Despite Language in Lease (December 23, 1994), Los Angeles Daily Journal.
27. Property Problems May Ensnare Prior Owners (November 1994), Environmental Compliance & Litigation Reporter (with Peter Gelles)
28. Supreme Court Environmental Roundup (October 1994), California Environmental Law and Regulation Reporter.
29. Plaintiffs Must Demonstrate that Pollution is "Reasonably Abatable" (October 1994), Los Angeles Daily Journal.
30. The Supreme Court's Environmental Round-Up (August 23, 1994), O'Melveny & Myers Executive Brief, Environmental Law.
31. Easement Holders May Escape CERCLA Liability (August 4, 1994) OMM Executive Brief, Environmental Law.
32. Supreme Court Environmental Round-Up for the 1993 Term (July 1994), Los Angeles Daily Journal.
33. EPA Tries Again: Lenders Exempt from UST Liability? (July 8, 1994), OMM Executive Brief, Environmental Law.

34. Gasoline Spills Excluded from State Superfund Law (5/94), Los Angeles Daily Journal.
35. Can Sellers Protect Themselves from Continuing Environmental Liability (May/June 1994), Los Angeles County Bar Association Real Property Section Newsletter (with Peter Gelles).
36. Reader Alert! EPA Lender Liability Regulations Invalidated (Spring, 1994), California Real Property Journal.
37. Gasoline Cleanups Not Covered by the State's Superfund Law (5/27/94), Los Angeles Daily Journal.
38. Recent Case Strikes Down EPA Protection for Lenders (4/22/94), Los Angeles Daily Journal.
39. 'Cadillac' Compliance Could Mitigate Environmental Crime (March 25, 1994), Los Angeles Daily Journal (with James Asperger).
40. Environmental Due Diligence in the Shadow of the SEC (January 1994), Los Angeles Daily Journal.
41. Non-Emergency Environmental Reporting Under Leases (November/December 1993), Los Angeles County Bar Association, Real Property Section Newsletter.
42. Environmental Work Product Frequently is Not Privileged (12/27/93), Los Angeles Daily Journal.
43. Landowners May Sue Their Predecessors for Tortious Use (11/29/93), Los Angeles Daily Journal.
44. Parent Corporations Could Be Held Responsible as Operators (10/22/93), Los Angeles Daily Journal.
45. Ninth Circuit Decision Narrows CERCLA's Petroleum Exclusion (9/24/93), Los Angeles Daily Journal.
46. Limiting Lenders' Risks from Contaminated Collateral (Fall, 1993), Los Angeles County Bar Association, Environmental Law Section Newsletter.
47. Tiered Permitting: California's New System of Regulating Hazardous Waste Treatment (August, 1993), Los Angeles Lawyer.
48. Past Pollution May Trigger Release Reporting Problems (8/27/93), Los Angeles Daily Journal.
49. *City of Phoenix v. Garbage Services Company*: Trustees May Be Held Personally Liable for Costs of Cleaning Up Contaminated Property (Summer, 1993), Estate Planning, Trust & Probate News.
50. Lenders May Be Liable Under CERCLA Despite New Rules (7/23/93), Los Angeles Daily Journal.
51. Pending Legislation Would End Environmental Border Zones (6/25/93), Los Angeles Daily Journal.

52. Passive Prior Owners May Be Liable for Land Contamination (5/28/93), Los Angeles Daily Journal.
53. Liability of Passive Prior Owners of Contaminated Property (March, 1993), Environmental Liability, Enforcement & Penalties Reporter.
54. Five Regulation Tiers Govern Methods of Waste Treatment (2/26/93), Los Angeles Daily Journal.
55. "Tiered Permits" for Treatment of Wastes Help Small Business" (2/12/93), Los Angeles Daily Journal.
56. "Dying at the Right Time: A Critical Legal Theory Approach to Timing-of-Death Issues," 5 Issues in Law & Medicine 3 (Summer 1989).
57. Comment, "It is Time to End the Lawyer's Immunity from Countersuit," 35 UCLA L. Rev. 99 (1987).

I served as an editor for the Los Angeles County Bar Association Environmental Law Newsletter from November 1995 to May 1996.

Before entering law school, I wrote and edited articles for Unique Publications (relating to racquet ball, martial arts, and action movies) and for the Disney Channel Magazine. None of these articles relate to legal issues.

As Deputy Secretary and General Counsel of the California Resources Agency, I made a number of speeches regarding potential changes to the California Environmental Quality Act (CEQA). I also participated in panel discussions on CEQA. My speeches include the following:

"What's New? Potential New Developments in CEQA," Law Seminars International, Santa Monica, September 14, 2005.

"CEQA Improvement Advisory Group: Process and Results," CLE International, San Francisco, September 23, 2005.

"Evolution of CEQA: A Legislative Update," State Bar Environmental Conference, Yosemite, California, October 21, 2005.

Update on CEQA improvement to the environmental section of the Los Angeles Chamber of Commerce, Los Angeles, June 23, 2005 (extemporaneous remarks).

13. **Health: What is the present state of your health? List the date of your last physical examination.**

The present state of my health is excellent. My last physical examination was November 21, 2005.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held any judicial offices.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I am not and have not been a judge.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

March 2004 – present: Deputy Secretary and General Counsel, California Resources Agency, appointed.

I have never been a candidate for elective public office.

17. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

July 1989 – July 1990
The Honorable Sandra Day O'Connor
Supreme Court of the United States

June 1988 – June 1989
The Honorable Alex Kozinski
U.S. Court of Appeals for the Ninth Circuit

2. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

November 1990 – February 2004:	O'Melveny & Myers LLP, 400 South Hope Street, Los Angeles, CA 90071. Associate (11/90-1/97; partner 2/97-2/04)
June 1987-August 1987:	Mitchell, Silberberg & Knupp (summer associate)
August 1985-August 1986:	Alschuler, Grossman & Pines (summer associate, June 1986-August 1986; part-time library assistant during the first year of law school, August 1985- May 1986.)

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I began my legal career in 1988 as a law clerk to Judge Alex Kozinski, U.S. Court of Appeals for the Ninth Circuit. I continued in 1989 as a law clerk to Justice Sandra Day O'Connor, Supreme Court of the United States.

Following my Supreme Court clerkship, I joined O'Melveny & Myers LLP in 1990. During the early years of my career, I participated in both litigation and transactional matters. In litigation matters I provided analysis and advice on environmental legal issues. I also represented clients in connection with real estate and natural resource transactions.

During the period from approximately 1994 to 1996, my practice focused on environmental compliance and pre-litigation matters, including assisting clients with implementing environmental audits and addressing property contamination issues.

After becoming a partner at O'Melveny in 1997, I became the co-chair of the environmental law practice group. I continued with litigation, transactional and compliance representations. During the latter part of this period, my practice focused on litigation and pre-indictment criminal representation.

I left O'Melveny in February 2004 to become the Deputy Secretary and General Counsel for the California Resources Agency. My work in this position includes responsibility for general legal matters for the Resources Agency, overseeing certain legal issues arising from the constituent

entities of the Resources Agency, and assisting on other Resources Agency matters. I am also the Secretary for Resources' alternate on the Pacific Forest and Watershed Land Stewardship Council, a nonprofit conservation organization.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My practice has included litigation, compliance, and transactional matters primarily in the areas of environmental and natural resources law.

Typical former clients include a real estate investment company, a California investor-owned electric utility, a telecommunications company, a large urban water district, a non-profit organization, a California power generating company, an oil company, and private landowners.

My work for the California Resources Agency includes responsibility for general legal matters, overseeing certain legal issues arising from the constituent entities of the Resources Agency, and assisting on other Resources Agency efforts.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Although I occasionally appeared in court in connection with litigation matters, such appearances were infrequent.

2. What percentage of these appearances was in:

- (a) federal courts: 0%
- (b) state courts of record: 100%
- (c) other courts: 0%

3. What percentage of your litigation was:

- (a) civil: 90%
- (b) criminal: 10%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As is frequently the case in major environmental enforcement matters, all cases in which I was involved were settled.

5. What percentage of these trials was:
 (a) jury;
 (b) non-jury.

All cases in which I was involved were settled.

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
 (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
 (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. People v. Atlantic Richfield Company, et al. (San Francisco Superior Court Case No. CGC-02-409327)

Atlantic Richfield Company (ARCO) was the subject of an investigation by the California Attorney General's Office, working in conjunction with the State Water Resources Control Board and the California Environmental Protection Agency, for alleged violations relating to the underground storage tanks (USTs) at its retail gas station facilities and certain other facilities. I represented ARCO in connection with this investigation, along with two other partners, who are former federal prosecutors. My role included managing a team of litigators and paralegals in the conduct of an internal investigation, development of legal defenses and strategy, response to informal discovery requests, pre-indictment presentations and negotiations with prosecutors, selection and preparation of expert witnesses, and negotiation and documentation of the settlement agreement. In June 2002, ARCO settled this investigation in a civil settlement that included payment of civil penalties, funding an environmentally beneficial project, injunctive relief, and reimbursing investigation costs. The settlement was documented in a civil consent judgment that was signed and entered in San Francisco Superior Court on July 17, 2002.

Date: 2000-2002

Court: San Francisco Superior Court

Judge: Judge James J. McBride

Principal Counsel for the State:

Reed Sato, Deputy Attorney General, Department of Justice, 1300 I Street, Suite 1101,
Sacramento, CA 94244. Phone: 916-324-8630

Will Brieger, Deputy Attorney General, Department of Justice, 1300 I Street, Suite 1101,
Sacramento, CA 94244, Phone: 916- 324-2512

2. Pre-Indictment Criminal Investigation – Underground Storage Tank Investigation

In April and May 2000, the United States Attorneys Offices for the Central and Eastern Districts of California and the District of Nevada, working in conjunction with the Criminal Investigation Division of the U.S. Environmental Protection Agency and the Federal Bureau of Investigation, commenced an investigation into ARCO's compliance with federal regulations requiring the upgrade of existing underground storage tanks. This investigation included issuance of multiple grand jury subpoenas as well as informal discovery requests. I represented ARCO in connection with these federal investigations, along with two other partners, who are former federal prosecutors. I participated in conducting an internal investigation, developing legal defenses and strategy, document production in connection with the federal subpoenas, and responding to requests for additional information. No criminal or civil lawsuits were ultimately filed in connection with the federal investigation.

Date: 2001-2003

Principal Counsel:

William Carter, Esq.
Assistant United States Attorney
Public Corruption & Government Fraud Section
Office of the United States Attorney
312 North Spring Street
Los Angeles, CA 90012

Robin R. Taylor, Esq.
(subsequently replaced by S. Robert Tice-Raskin, Esq.)
Assistant United States Attorney
Office of the United States Attorney
501 I Street, Suite 10-100
Sacramento, CA 95814

Margaret M. Stanish, Esq.
Assistant United States Attorney
Office of the United States Attorney
333 S. Las Vegas Blvd., 5th Floor
Las Vegas, Nevada 89101

3. People v. Atlantic Richfield Company, et al. (Orange County Superior Court Case No. 80-40-30)

The District Attorney for Orange County filed a civil action against ARCO and BP Amoco Corporation, along with ARCO Chemical Company and Thrifty Oil Company, on January 6, 1999, alleging violation of various state environmental laws at 143 retail gas stations in 29 cities in Orange County, California. The complaint was subsequently amended on October 5, 2000. I represented ARCO and BP Amoco Corporation in connection with this action, along with two other partners, who are former federal prosecutors. My role included managing a team of litigators and paralegals in conducting an internal investigation, responding to discovery, selecting and preparing expert witnesses, developing legal defenses and strategy, drafting briefs and motions, participating in mediation, and negotiating and documenting the settlement agreement. The action was settled in a civil settlement that included reimbursement of the cost of enforcement and funding a program to address groundwater contamination. The settlement was approved by the court on December 17, 2002.

Date: 2001-2002

Court: Superior Court for County Of Orange - Central Justice Center

Judge: Judge Raymond J. Ikola

Principal Counsel for Orange County:

Joe D'Agostino, Assistant District Attorney
401 Civic Center Drive
Santa Ana, CA 92701-4575
(714) 347-8720, FAX (714) 568-1250

Mark P. Robinson, Jr., Esq.
Allan F. Davis, Esq.
Robinson, Calcagnie & Robinson
620 Newport Center Drive, 7th Floor
Newport Beach, CA 92660
(949) 720-1288, FAX (949) 720-1292

4. People v. BP West Coast Products LLC, et al. (San Diego County Superior Court Case No. GIC787991)

On May 6, 2002, San Diego City and County prosecutors filed a complaint in the Superior Court of California, County of San Diego, alleging violations of various environmental laws relating to operation of gas station facilities at 116 ARCO facilities in San Diego County. I represented BP in connection with this complaint, along with two other partners, who are former federal prosecutors. My role included managing a team of litigators and paralegals in conducting internal investigations, responding to informal discovery requests, making presentations to and

negotiating with prosecutors, preparing expert witnesses, developing legal defenses and strategy, drafting briefs and motions, and negotiating and documenting the settlement agreement. ARCO agreed to resolve the case in a stipulated judgment filed with the San Diego County Superior Court on September 29, 2003. The settlement terms included payments of civil penalties, costs of the investigation, funding environmental projects, and injunctive relief.

Date: 2002-2003

Court: Superior Court of the State of California for the County of San Diego

Judge: Judge J. Richard Haden

Principal Counsel for the City and County of San Diego:

Steven Gold, Deputy City Attorney
San Diego City Attorney, Consumer and Environmental Protection Unit, Criminal Division
1200 Third Avenue, Suite 700
San Diego, California 92101
Phone: 619-533-5500

Karen Doty, Deputy District Attorney
County of San Diego, Economic Fraud and Environmental Protection Division
330 West Broadway, Suite 720
San Diego, CA 92101
Phone: 619-685-6531

Rod Lorang
Senior Deputy County Counsel, County of San Diego
Office of County Counsel
1600 Pacific Highway, Room 355-MS A-12
San Diego, CA 92101
Phone: 619-531-4884

5. People v. Atlantic Richfield Company (Stanislaus County Superior Court Case No. 312020)

In October 2000, an Environmental Circuit Prosecutor initiated an investigation of ARCO stations in Stanislaus and Merced Counties for alleged failure to comply with various requirements relating to UST compliance. I represented ARCO in connection with this investigation, along with two other partners, who are former federal prosecutors. My role included overseeing litigators and paralegals in conducting an internal investigation, responding to informal discovery requests, making presentations to and negotiating with the prosecutor, preparing an expert witness, developing legal defenses and strategy, and supervising the drafting of a settlement agreement. ARCO agreed to resolve the case in a stipulated judgment filed with the Stanislaus County Superior Court on June 14, 2002. The settlement terms included payment

of civil penalties and costs of the investigation as well as injunctive relief. The stipulated judgment was signed and entered by the Court on June 25, 2002.

Date: 2000-2002

Court: Stanislaus County Superior Court

Judge: Judge Hurl W. Johnson

Principal Counsel for the State:

Brett Morris, Deputy Attorney General, Department of Justice, Oakland, California, Phone: 510-622-2176

6. People v. BP West Coast Products, LLC, and Atlantic Richfield Company (San Joaquin County Superior Court Case No. CV 022400)

In September 2002, the Deputy District Attorney of the Environmental Prosecutions Unit for the County of San Joaquin initiated an investigation into ARCO gas stations located in the County of San Joaquin for alleged failure to comply with various environmental compliance requirements relating to operation of a gas station facility. I represented BP West Coast Products in connection with this investigation, along with two other partners, who are former federal prosecutors. My role included managing litigators and paralegals in conducting an internal investigation, responding to informal discovery requests, making presentations to and negotiating with the prosecutor, developing legal defenses and strategy, and negotiating and documenting the settlement agreement. BP West Coast Products agreed to resolve the case in a stipulated judgment filed with the San Joaquin County Superior Court on December 1, 2003 for civil penalties, costs of investigation, and funding for environmental projects.

Date: 2002-2003

Court: Superior Court of the State of California for the County of San Joaquin

Judge: Judge Carter B. Holly

Principal Counsel for the City and County of San Diego:

David Irey

Lead District Attorney, Environmental Prosecution Unit, 222 East Weber Avenue, Room 202, Stockton, California 95202

Phone: 209-468-2400

7. People ex rel SCAQMD v. BP West Coast Products, et al. (Los Angeles County Superior Court, Case No. BC 291876)

On March 11, 2003, the South Coast Air Quality Management District (the District) filed a civil complaint against BP seeking \$320 million in penalties based on 51 causes of action alleging

violations of a District rule requiring self-inspection of floating roofs of aboveground storage tanks. In June 2003, the District filed a First Amended Complaint adding additional causes of action for nuisance. The amended complaint sought \$420 million in civil penalties. I represented BP in connection with this action, along with two other partners, who are former federal prosecutors. My role included managing a team of litigators and paralegals in conducting an internal investigation, responding to discovery, preparation of expert witnesses, development of legal defenses and strategy, and drafting briefs and motions. I left O'Melveny for state service while this case was still pending.

Date: 2002-2003

Court: Superior Court of the State of California for the County of Los Angeles

Judge: Judge (now Justice) Frances Rothschild

Principal Counsel for the SCAQMD:

Joseph Panasiti
Senior Deputy District Prosecutor, SCAQMD
21865 E. Copley Drive
Diamond Bar, CA 91765
Phone 909-396-2961

Pierce O'Donnell
Gary Roberts
O'Donnell & Shaeffer LLP
550 South Hope Street
Suite 2000
Los Angeles, CA 90071
Phone: 213-532-2000

8. People of the State of California v. BP West Coast Products, LLC, et al. (San Mateo County Superior Court Case No. CIV 444710)

The District Attorney in San Mateo County and the San Mateo County Department of Health, Environmental Health Services Division commenced an investigation of BP West Coast Products, LLC, for a release at an ARCO Station in San Mateo County in November 2000. I represented BP West Coast Products in connection with this investigation, along with two other partners, who are former federal prosecutors. My role included supervising a team of litigators and paralegals in conducting an internal investigation, developing legal defenses and strategy, responding to informal discovery requests, pre-indictment presentations and negotiations with the prosecutor. I left O'Melveny for state service while this case was still pending.

Date: 2000-2003

Court: San Mateo County Superior Court
 Judge: Judge George A. Miram
 Principal Counsel for the State:
 John L. Grandsaert (now Judge Grandsaert)
 Deputy District Attorney
 San Mateo County

John E. Wilson, Esq.
 Deputy District Attorney in Charge
 County of San Mateo
 Consumer & Environmental Protection Unit
 Hall of Justice & Records
 400 County Center, 4th Floor
 Redwood City, CA 94063

9. *People v. Atlantic Richfield Company, et al.* (Los Angeles Superior Court Case No. 1CR02840)

On August 16, 2001, the Los Angeles City Attorney's Office filed a misdemeanor criminal complaint against ARCO, BP, and the individual operators of six gas stations alleging violations of the Los Angeles Municipal Code relating to the operation and maintenance of the gas station facilities. I represented ARCO and BP in connection with this investigation, along with two other partners, who are former federal prosecutors. My role including supervising litigators in conducting an internal investigation, developing legal defenses and strategy, and documenting a settlement agreement that resulted in the dismissal of the criminal complaint. The Final Judgment Pursuant to Stipulation was entered on August 29, 2002 and the criminal case was formally dismissed on September 20, 2002.

Date: 2000-2002

Court: Los Angeles County Superior Court
 Judge: Commissioner Nancy S. Gast (case settled before arraignment)
 Principal Counsel for the State:
 Patricia Bilgin, Esq.
 Elise A. Ruden, Esq.
 Deputy City Attorneys
 Office of the City Attorney
 1800 City Hall East
 200 Main Street
 Los Angeles, CA 90012

10. *The Irvine Company v. The County of Orange, California* (Los Angeles County Superior Court, Case No. BC308544)

On December 30, 2003, The Irvine Company filed a civil complaint against the County of Orange alleging that the County breached its lease of a parcel of property used as a municipal waste landfill. The Irvine Company sought declaratory relief. I represented The Irvine Company in connection with this complaint, along with another partner who is a former federal prosecutor. My role included legal and factual investigation and analysis, developing legal theories and drafting the complaint. I left O'Melveny for state service while this case was still pending.

Date: 2003

Court: Superior Court of the State of California for the County of Los Angeles

Judge: Judge Mel Red Recana

Principal Counsel for County of Orange:

James J. Dragna

Tiffany Hedgpeth

Jesus Chavez

Bingham McCutchen LLP

355 South Grand Ave., Ste. 4400

Los Angeles, CA 90071-3106

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I have assisted clients in litigation, compliance, transactional, and natural resource matters.

Major litigation matters include representing an oil company in civil and criminal enforcement actions arising from its operation of gas stations, a refinery, and other facilities. I worked with a large litigation team including one or more former federal prosecutors. My role included managing a team of litigators and paralegals in investigation, response to discovery, preparation of expert witnesses, development of legal defenses and strategy, drafting briefs and motions, and negotiating and drafting settlements.

Major compliance matters include representing a telecommunications company in a nationwide environmental audit of its facilities, resulting in the voluntary disclosure and correction of multiple non-compliance issues and a comprehensive settlement agreement through the federal Environmental Protection Agency's voluntary self-disclosure

program. In another matter, I represented a California power generating company in its efforts to obtain incidental take authorization for the operations of two of its power plants.

Major transactional matters include representing a California investor owned electric utility on environmental issues arising from divestiture of its fossil-fueled generating facilities. This representation included assisting the client in structuring the environmental liability allocation, overseeing the performance of site assessments, and transferring environmental permits to purchasers, among other environmental matters. For several years, I represented a real estate investment company in multi-faceted environmental compliance and cost recovery matters arising from contamination at shopping center properties and other investment properties. In another matter, I assisted a client negotiate and enter into a prospective purchaser agreement with the California Department of Toxic Substances Control for a 167-acre site that had previously been contaminated. I also negotiated an environmental insurance policy on behalf of the developers of a closed military base in California.

For many years I represented a large urban water district in a number of transactions and litigation matters, including a water transfer agreement, several groundwater storage and conjunctive use agreements, a water conservation agreement with farmers in an irrigation district, and strategic advice on potential litigation.

Major pro bono matters include representing a non-profit organization in its efforts to develop a former oil field into an open space park, representing a non profit organization on proposed legislation to encourage brownfield development, and representing a non-profit organization on asbestos issues.

My work for the California Resources Agency includes responsibility for general legal matters for the Resources Agency, overseeing certain legal issues arising from the constituent entities of the Resources Agency, and assisting on other Resources Agency matters.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

O'Melveny & Myers Defined Benefit Plan (plan with former law firm, no control). As of January 1, 2004, I had accrued an annual benefit of \$61,900, payable for life beginning at age 62, with a lump sum value of \$318,351.

Cal PERS California Public Employees Retirement System. As of June 30, 2005, my ending balance was \$4,316. I am not eligible for a pension until five years of service have accrued. I began state service on March 1, 2004.

I have no arrangements to be compensated in the future for any financial or business interest.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

If confirmed, I would comply with the Code of Conduct for United States Judges, and all applicable statutes, established rules, and guidelines. I will be sensitive to potential conflicts of interest arising from my prior associations, former clients, my former law firm, or my financial arrangements. My investments in securities are in mutual or common investment funds.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

I do not have any plans, commitments, or agreements to pursue outside employment, with or without compensation, if I am confirmed to serve on the court.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

Please see attached financial disclosure report.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

Please see attached financial net worth statement and schedules.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

I have never held a position or played a role in a political campaign.

AO-10 Rev. 1/2004		FINANCIAL DISCLOSURE REPORT NOMINATION FILING		Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)
1. Person Reporting (Last name, First name, Middle initial) Ikuta, Sandra S		2. Court or Organization Ninth Circuit		3. Date of Report 2/9/2006
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge--Nominee		5. ReportType (check appropriate type) <input checked="" type="radio"/> Nomination, Date 2/8/2006 <input type="radio"/> Initial <input type="radio"/> Annual <input type="radio"/> Final		6. Reporting Period 1/1/2005 to 1/31/2006
7. Chambers or Office Address California Resources Agency 1416 Ninth Street Suite 1311 Sacramento, California 95814		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.				

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ **NONE** - (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Deputy Secretary and General Counsel	California Resources Agency
2. Alternate Director	Pacific Forest and Watershed Lands Stewardship Council
3. Trustee	Trust I

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ **NONE** - (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1. 1997	O'Melveny & Myers Defined Benefit Plan with former law firm, no control
2. 2004	CalPERS California Public Employee Retirement System

	NAME OF TAXPAYER	NAME OF SPOUSE REPORTING	DATE OF REPORT
		Ikuta, Sandra S	2/9/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

☐ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (years, not spouse's)
1.	2006	Wages, State of California	\$9,857
2.	2005	Wages, State of California	\$114,406
3.	2004	Wages, State of California; O'Melveny & Myers LLP partner capital account	\$61,795; \$559,564

B. Spouse's Non-Investment Income (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

☐ NONE - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.	2006	self-employment earnings, freelance photographer
2.	2005	self-employment earnings, freelance photographer

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	exempt	

	Ikuta, Sandra S	2/9/2006
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V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ **NONE** - (No such reportable gifts.)

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. exempt		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☐ **NONE** - (No reportable liabilities.)

<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1. Bank of America	Mortgage on rental property, Agoura, California	M
2. CitiMortgage	Mortgage on rental property, West Los Angeles, California	L
3. Chase Manhattan	Mortgage on rental property, Los Angeles, California	M

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

1. Income-Gain Taxable (See Column C1)	A	\$1,000,000	B	\$1,000,000	C	\$1,000,000	D	\$5,000,000,000	E	\$15,000,000,000
2. Value Added (See Column C2)	F	\$25,000,000,000	G	\$1,000,000,000	H	\$1,000,000,000	I	\$1,000,000,000	J	\$1,000,000,000
3. Value Methods Used (See Column C2)	K	Cost of Sales	L	Cost of Sales	M	Cost of Sales	N	Cost of Sales	O	Cost of Sales
	U	Book Value	V	Book Value	W	Book Value	X	Book Value	Y	Book Value

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Amount Code 1 (A-H)	Type (e.g. div. rust. or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g. buy, sell, merger, redemption)	(2) Date - Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
Place "XX" after each asset exempt from price disclosure									
19. American Funds VCSP/CollegeAmerica					exempt				
20. -Growth Fund of America 529A	A	Dividend	K	T					
21. -The Investment Company of America-529A	A	Dividend	J	T					
22. -Washington Mutual Investors Fund-529A	A	Dividend	K	T					
23. -The Bond Fund of America 529A	A	Dividend	K	T					
24. Brokerage Account #2									
25. --Federated Capital Reserves	A	Dividend	K	T					
26. -Alliancebernstein Capital Resv	A	Dividend	J	T					
27. -Eaton Vance Tax Managed Growth Fund Class B Open End		None	J	T					
28. -MFS Capital Opportunities Fund Class B Open End Fund		None	J	T					
29. -New Perspective Fund Class B	A	Dividend	J	T					
30. -Putnam Voyager Fund Class B		None	J	T					
31. Flexible/Variable Universal Life Insurance Incentive Life									
32. -Eq/Alliance Common Stock	A	Dividend	K	T					
33. -Eq/Bernstein Diversified Value	A	Dividend	J	T					
34. -Eq/Equity 500 Index	A	Dividend	K	T					
35. -Eq/Fi Small Mid Cap Value	A	Dividend	J	T					
36. -Eq/Mercury Basic Value Equity	A	Dividend	J	T					

1. Income/Gain Codes:	A = \$15,000 or less	B = \$15,000-\$30,000	C = \$30,001-\$100,000	D = \$100,001-\$150,000	E = \$150,001-\$500,000
(See Columns B1 and D14)	F = \$500,001-\$100,000	G = \$100,001-\$1,000,000	H1 = \$1,000,000-\$5,000,000	H2 = More than \$5,000,000	
2. Value Codes:	J = \$15,000 or less	K = \$15,001-\$50,000	L = \$50,001-\$100,000	M = \$100,001-\$250,000	
(See Columns C1 and D3)	N = \$250,000-\$500,000	O = \$500,001-\$1,000,000	P1 = \$1,000,001-\$5,000,000	P2 = \$5,000,001-\$25,000,000	
	P3 = \$25,000,001-\$50,000,000		P4 = More than \$50,000,000		
3. Value Method Codes:	Q = Appraised	R = Cost (Full Excess Only)	S = Assessed	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

Page 3 of 3	Name of Person Reporting Ikuta, Sandra S	Date of Report 2/9/2006
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VII. INVESTMENTS and TRUSTS — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
37. -Eq/Mercury International Value	A	Dividend	J	T	exempt				
38. -Eq/MFS Emerging Growth Companies	A	Dividend	J	T					
39.									
40.									
41.									
42.									
43.									
44.									
45.									
46.									
47.									

1. Income/Gain Codes	A - \$1,000 or less	B - \$1,001-\$2,500	C - \$2,501-\$5,000	D - \$5,001-\$15,000	E - \$15,001-\$50,000
(See Columns B1 and D4)	F - \$50,001-\$100,000	G - \$100,001-\$1,000,000	H - \$1,000,001-\$5,000,000	I - More than \$5,000,000	
2. Value Codes	J - \$15,000 or less	K - \$15,001-\$50,000	L - \$50,001-\$100,000	M - \$100,001-\$250,000	
(See Columns C1 and D3)	N - \$250,001-\$500,000	O - \$500,001-\$1,000,000	P - \$1,000,001-\$5,000,000	Q - \$5,000,001-\$25,000,000	
	R - \$25,000,001-\$50,000,000	S - More than \$50,000,000			
3. Value Method Codes	Q - Appraisal	R - Cost Basis/Market	S - Appraisal	T - Cost/Market	
(See Column C2)	U - Bank Statement	V - Other	W - Indefinite		

FINANCIAL DISCLOSURE REPORT	Report of the following reporting person: Ikuta, Sandra S	Date of Report: 2/9/2006
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

FINANCIAL DISCLOSURE REPORT	Report of the following reporting person: Ikuta, Sandra S	Date of Report: 2/9/2006
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IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature

Sandra S. Ikuta

Date

February 9, 2006

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		90	000	Notes payable to banks-secured			
U.S. Government securities-add schedule		10	000	Notes payable to banks-unsecured			
Listed securities-add schedule		708	692	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		791	988
Real estate owned-add schedule	3	801	049	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance		9	366				
Other assets itemize:							
				Total liabilities			
				Net Worth	3	927	119
Total Assets	4	719	107	Total liabilities and net worth	4	719	107
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT**NET WORTH SCHEDULES****U.S. Government Securities**

Series EE Bonds	\$ 10,000
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Listed Securities**IRA**

-FEQTX Fid Equity Income II	\$ 63,246
-FTHRX Fid Intermed Bond	70,305
-FUSEX Spartan US Eq Index	60,952
-OBTS SEI Stable Asset	172,835

California Savings Plus Program:

71,334

401K and 457 Gartmor InvDes AGG FD SC

Brokerage Account #1

-500 Index Fund Inv	36,637
-Small Cap Index Fund Inv	35,856

American Funds VCSP/College America

-Growth Fund of America 529A	16,259
-The Investment Company of America-529A	13,456
-Washington Mutual Investors Fund-529A	17,521
-The Bond Fund of America 529A	14,402

Brokerage Account #2

-Federated Capital Reserves	26,698
-Alliancebernstein Capital Resv.	0
-Eaton Vance Tax Managed Growth Fund Class B	4,132

Open End

-MFS Capital Opportunities Fund Class B Open End Fund	1,339
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-New Perspective Fund Class B	1,793
-Putnam Voyager Fund Class B	1,639

Flexible/Variable Universal Life Insurance**Incentive Life**

-Eq/Alliance Common Stock	20,780
-Eq Bernstein Diversified Value	15,359
-Eq/Equity 500 Index	18,527
-Eq/Fi Small Midcap Value	11,065
-Eq/Mercury Basic Value Equity	14,741
-Eq/Mercury International Value	10,632
-Eq/MFS Emerging Growth Companies	9,184

Total Listed Securities

 \$ 708,692

Real Estate Owned

Personal residence	\$ 686,549
Rental Property, Agoura California	849,000
50% interest in rental property, Venice, California	390,000
50% interest in rental property, West Los Angeles, CA	447,500
Rental property, Los Angeles, California	1,000,000
Investment property, Kulakai, Hawaii	428,000
Total Real Estate Owned	\$ 3,801,049

Real Estate Mortgages Payable

Personal Residence	\$ 388,715
Rental Property	171,000
Rental Property	82,040
Rental Property	150,233
Total Real Estate Mortgages Payable	\$ 791,988

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

I took advantage of all requests for pro bono environmental representation that came to my attention while at O'Melveny & Myers. My most significant pro bono environmental matters are described below.

Over the course of several years, I represented a non-profit organization that assists in the protection of conservation lands and restoration of brownfield areas. I represented this organization in a major effort to develop oil field property into a major open space park. I subsequently provided environmental advice to the organization on a variety of other projects, including the acquisition of an urban site for a youth program. I spent an estimated 80-90 hours these matters.

I represented a nonprofit organization dedicated to the re-development of brownfield properties to benefit inner city neighborhoods, in connection with its sponsorship of legislation that would have limited the environmental liability of brownfield developers. I spent an estimated 40-50 hours on this effort.

I represented a nonprofit youth organization in connection with the sale of its facility. I assisted the organization in addressing asbestos-containing material and other environmental issues affecting its facility prior to sale. I spent 74 hours on this effort.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I do not currently belong, and to my knowledge have never belonged, to any organization which discriminates.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

In September 2005, I was invited to an interview with the Deputy White House Counsel concerning a possible nomination to the U.S. Court of Appeals for the Ninth Circuit. In October 2005, I was interviewed by staff from the White House Counsel's office and the Department of Justice. Following a background investigation and completing all the nomination paperwork, I was informed by the White House that my nomination would be forwarded to the Senate. The President submitted my nomination on February 8, 2006.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No one involved in the process of selecting me as a judicial nominee has discussed with me any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how I would rule on such a case, issue or question.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

- d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

A judge of the United States Court of Appeals must take an oath to faithfully and impartially discharge and perform his or her duties under the Constitution and laws of the United States. The duties of a federal judge are limited in a number of ways.

First, Article III, Section 2 of the U.S. Constitution limits the federal judicial power to cases that arise under the Constitution or under federal statutes and treaties and to controversies between two or more states, citizens of different states, and between states and foreign citizens or nations. Accordingly, federal courts may resolve legal disputes only in the context of an actual case or controversy.

Second, the Constitution provides that legislative powers are vested in Congress, the executive power is vested in the President, and the judicial power is vested in the Supreme Court and inferior courts that Congress establishes. This separation of powers limits federal courts to resolving legal disputes, not to exercise legislative functions that belong to Congress.

Finally, under the doctrine of stare decisis, federal appellate judges are bound by precedents set by the Supreme Court of the United States and decisions of prior panels unless such decisions are modified by en banc decision, Supreme Court decisions or subsequent legislation.

Because of the important role judges play in our system of government, it is vital for judges to be guided by the limitations set forth in the Constitution and decisional law. A federal judge's scrupulous adherence to such rules and to judicial self-restraint pursuant to the judge's oath of office is essential for maintaining public confidence in the judicial system.

AFFIDAVIT

I, SANDRA SEGAL KUTA, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/28/06
(DATE)

Sandra Segal Kuta
(NAME)

(NOTARY)

CALIFORNIA JURAT WITH AFFIANT STATEMENT

State of California

County of SACRAMENTO } ss.☐ See Attached Document (Notary to cross out lines 1-6 below)☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

1 _____

2 _____

3 _____

4 _____

5 _____

6 _____

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me on this

28th day of February, 2006, by

Date Month Year

(1) SANDRA SEGAL IKUTA
Name of Signer☐ Personally known to me☒ Proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)
(and)(2) _____
Name of Signer☐ Personally known to me☐ Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Janette M. Wilcox

Signature of Notary Public

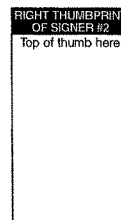
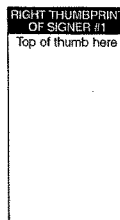
Place Notary Seal Above

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached DocumentQUESTIONNAIRE FOR NOTARIES REFERREDTitle or Type of Document: TO THE U.S. SENATE COMMITTEE ON THE JUDICIARYDocument Date: 2/28/06 Number of Pages: _____

Signer(s) Other Than Named Above: _____



Senator BROWNBACK. Judge Cox.

**STATEMENT OF SEAN F. COX, NOMINEE TO BE DISTRICT
JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN**

Judge Cox. Thank you, Senator. I would like to introduce my wife, Janine; my son, Patrick; my daughter, Clare; my brother-in-law, Doug Cutcher, and Kyra and Alissa Cutcher.

[The biographical information of Judge Cox follows:]

**QUESTIONNAIRE FOR NOMINEES REFERRED
TO THE
UNITED STATES SENATE COMMITTEE ON THE JUDICIARY**

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full Name (include any former names used.)
Sean Francis Cox
2. Address: List current place of residence and office address(es).
Residence - Canton Twp., Michigan
Office - 1441 St. Antoine, Rm 604, Frank Murphy Hall of Justice,
Detroit, MI 48226
3. Date and place of birth.
Detroit, Michigan - September 24, 1957
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).
Married, Janine Marie Cox, (maiden name - Cutcher) Registered nurse, Oakwood Hospital, Dearborn, Michigan
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
Detroit College of Law - 1980 - 1983 - J.D. - May, 1983
University of Michigan, 1975 - 1979 - B.G.S. - May, 1979
6. Employment record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.
State of Michigan - Circuit Court Judge, Third Judicial Circuit - 1996 - present

Cummings, McClorey, Davis & Acho, P.C., Partner, 1990 - 1996

Bloom & Kavanaugh, Associate Attorney, 1989 - 1990

Kitch, Saurbier, Drutchas, Wagner & Kenney, Associate Attorney, 1984 – 1989

James Flynn,(dec'd) P.C., Law Clerk, 1983

Noel Keane, (dec'd) P.C., Law Clerk, 1982

**Fitzgerald, Hodgeman, Rutledge, Cawthorn & King, Law Clerk,
1981 – 1982**

WL Couse Construction Company, Construction worker, 1979 – 1980

**Incorporated Society of Irish American Lawyers, Member Board of Directors,
Approximately 1988 – 1994**

Michigan Federalist Society, Board of Advisors, 1996 – present

Livonia Bar Association, President, 1987 – 1988

**Board of Directors, Catholic Central High School, Alumni Association
May 2004 - present**

7. Military Services: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.
None

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the committee.
None applicable

9. Bar Associations: List all bar associations, legal or judicial related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

State Bar of Michigan

Former Member, Judicial Qualifications Committee, 1992 - 1996

Former Member, Negligence Section

Former Member, Committee on Character and Fitness, 1990 - 1996

**Former Member, Executive Council of the Young Lawyers Section of
The State Bar of Michigan**

Attorney Discipline Board - Former member, disciplinary panels

have served as Chair and written opinions on disciplinary and ethics issues

Incorporated Society of Irish - American Lawyers

**Former Member, Board of Directors
Member, Former Chair, Thomas Thornton Scholarship Committee**

**Former Member, Detroit Bar Association
Former Member, Livonia Bar Association
Former Director, Former President 1987/1988
Former Chair, Judicial Qualifications Committee, 1992/1993
Chair, Law Day, May 1990
Chair Law Day, May 1991
Chair, Law Day, May, 1992**

Michigan Federalist Society, Board of Advisors, 1996-present

**Wayne County Circuit Court - Docket Review Committee -
Jail Overcrowding Committee**

Wayne County Circuit Court - Chair, Security Committee

Michigan Judges Association - Corrections Committee

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I do not belong to any organizations that lobby.

Board of Directors, Catholic Central High School Alumni Association

11. Court Admission: List all court in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State Bar Michigan, 1983

U.S. District Court, Eastern District of Michigan, 1983

12. Published Writings: List the titles, publishers and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Expert in Medical Malpractice Cases, Michigan Trial Lawyers Magazine,

April, 1990

I believe that I have not given any speeches on issues of constitutional law or

legal policy. Periodically, I will give extemporaneous talks primarily to students which may provide an overview of the legal system specifically the criminal justice system. I would rarely use notes and when I did I would not retain any of them.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Excellent. My last physical was May 30, 2003.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court. **I was appointed Circuit Court Judge for the Third Judicial Circuit (Wayne County) of Michigan in March of 1996. I was elected in November of 1996 and re-elected in November of 1998. I was re-elected as Judge of the 3rd Judicial Circuit on November 2, 2004. My term expires on January 1, 2011. Wayne County Circuit Court Judges handle felonies, divorce, child custody and civil lawsuits over \$25,000.00.**

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or states constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reports, please provide copies of the opinions.

- 1) **People v Derrico Wallace; Circuit Court number 99011705**
People v. Jeffrey Newcombe; Circuit Court number 99500121
People v Tiya Manning; Circuit Court number 99006691-02
People v Tiya Manning; Circuit Court number 99006691-02 After Remand
People v. Dwight Pickett; Circuit Court number 01007260
People v. Gregory Poindexter; Circuit Court number 96005979
People v. Tracey Page; Circuit Court number 01011507
People v Joseph Robinson; Circuit Court number 02050071
People v Kala White; Circuit Court 98006797; 98001278
People v Maurice Traylor; Circuit Court number 00001478

- 2) **Based on our search, the following is a short summary of and citations for all appellate opinions where my decisions were reversed:**

In the case of *People v. Manning*, Circuit Court number 99006691-02, the

defendant filed a motion to suppress statements she made to the police. Pursuant to *People v Whitehead* 238 Mich App. 1 (1999), this Court granted the Defendant's Motion to Suppress Statement. This Court ruled that the 81 hours that passed between the time the defendant was arrested and the time of the second statement required suppression pursuant to *Riverside Co. v. McLaughlin*, 500 U.S. 44, 11 S. Ct. 1661, 114 L. Ed. 2d 49 (1991). However, the Michigan Court of Appeals in *People v. Manning*, 243 Mich App 615, 624 N.W., 2d 746 (2000), reversed this Court's decision pursuant to *People v Cipriano*, 431 Mich. 351; 419 N.W. 2d 781 (1988). This Court issued another opinion after remand pursuant to *People v. Cipriano* and denied the motion to suppress statement.

In *People v Randolph*, Circuit Court number 97009817, the defendant was convicted by a jury of unarmed robbery. The Michigan Court of Appeals reversed and remanded the case finding that the prosecution failed to present sufficient evidence at trial to sustain defendant's unarmed robbery conviction. The Court analyzed this case using the "transactional approach" finding that the defendant used force as a means of escaping. Because the defendant was not successful in escaping, the Court of Appeals ordered an entry of judgment of conviction of Larceny From A Building with resentencing, with the option for the prosecutor to retry the defendant on the original charge based on additional evidence, *People v Randolph*, 242 Mich. App. 417 (2000). The Michigan Supreme Court rejected the "transactional approach" but found that under the common law history of robbery that "the force used to accomplish the taking underlying a charge of unarmed robbery must be contemporaneous with the taking". *People v Randolph*, 466 Mich 532; 648 N.W. 2d 164 (2002). The Supreme Court remanded the case for entry of a conviction for larceny in a building and resentencing. Further, the defendant could not be retried for unarmed robbery.

In the case of *People v Mendoza*; Circuit Court Number 97010292, the defendant was convicted of a second degree murder and possession of a firearm during the commission of a felony. In *People v Mendoza*, 651 N.W. 2d 909 (2001), the Michigan Court of Appeals remanded the case back to this court for a new trial holding that this Court erred when it refused to instruct the jury on involuntary manslaughter. The Michigan Supreme Court concluded that a rational view of the evidence did not support an involuntary manslaughter instruction. The judgment of the Court of Appeals was reversed and the defendant's conviction was reinstated. *People v Mendoza*, 468 Mich. 527 664 N.W. 2d 685 (2003).

Grady Andrews v. George C. Malloy, a/k/a Lumac Properties, unpublished opinion per curiam of the Court of Appeals, decided [July, 17, 1998] (Docket No. 200252). This case involved a landlord-tenant dispute where the district court entered a consent judgment where it was determined that the defendant had a right to possession and that an order to evict plaintiff would be issued if he did not pay \$668.00 or move out by October 20, 1994. Plaintiff brought this action on December 11, 1995, where he claimed that he was unlawfully evicted and that the defendant interfered with his right to possession. Defendant moved for summary disposition asserting that the action was barred by the one-year statute of limitations and that he had the right to possession based on the district court judgment. This court granted summary disposition. The Michigan Court of Appeals held that defendant waived the affirmative defense of statute of limitations by failing to raise it in his first responsive pleading. Further, the district court judgment did not give the defendant the right to evict; instead it provided that a writ or restitution would be issued if plaintiff failed to pay the rent. Defendant did not obtain the writ and Michigan Court of Appeals reversed ruling that whether the plaintiff abandoned the apartment or was evicted is a question of fact not suitable for summary disposition.

Richard Hartman v. Dennis Lang and Rick Pardo, Rick Osborne, City of Dearborn and USA, Hockey, Inc., unpublished opinion per curiam of the Court of Appeals, decided [March, 2, 1999] (Docket No. 203964). This case involved a personal injury claim appeal from a default judgment of \$50,000 in favor of the plaintiff. The Michigan Court of Appeals held that this court did not have authority to order an entry of default based on the failure of an agent of defendant's insurance company to appear for a settlement conference. The Court ruled that the default provisions of MCR 2.401(F) and MCR 2.506(F) are limited to the failure of a party or a party's attorney to attend a mandatory conference.

American Medical Security, Inc., as Subrogee of Debra Guiles v. Allstate Insurance Company, unpublished opinion per curiam of the Court of Appeals, decided [April, 23, 1999] (Docket No. 206300). In this case, this court granted plaintiff's motion for summary judgment and denied defendant's motion for summary judgment. The plaintiff's subrogor, Debra Guiles, was injured in an automobile accident and had incurred medical expenses. Guiles was covered by her employer's welfare benefit plan, which

the plaintiff administered. Ms. Guiles also had a policy of no-fault automobile insurance issued by defendant. The group health expenses were paid by the welfare benefit plan. Plaintiff filed this action to recoup the medical expenses. The defendant moved for summary judgment, claiming that the statute of limitations had run prior to plaintiff's filing suit and pursuant to Michigan law, plaintiff's health insurance was primarily responsible to pay medical expenses. Plaintiff filed a motion for summary judgment arguing that the Employment Retirement Income Security Act preempted Michigan Law. This court held that this action was governed by a 6-year statute of limitations. The Michigan Court of Appeals held that one-year statute of limitations was applicable.

People of the State of Michigan v. Jeffery Trahey, order of the Court of Appeals, dated [September 13, 2000] (Docket No. 228442). In this case, this court granted defendant's motion to suppress evidence and the prosecution appealed. The Michigan Court of Appeals entered an order reversing the order to suppress evidence. The Court held that even though one officer asked the defendant where the drugs were before advising him of his Miranda Rights, the record supported that the evidence would have been inevitably discovered during the course of the arrest or during the inventory search.

People of the State of Michigan v. John Burkes, unpublished opinion per curiam of the Court of Appeals, decided [October, 27, 2000] (Docket No. 215694). - In this case, the defendant filed a motion to suppress evidence and this court granted the motion to suppress and the case was dismissed. This court found that the police lacked reasonable suspicion to justify a stop of the defendant, and probable cause to arrest. The Michigan Court of Appeals reversed and remanded the case back to the trial court, finding that based on the totality of circumstances, the investigatory stop was valid.

People of the State of Michigan v. Gregory Jones, unpublished opinion per curiam of the Court of Appeals, decided [February, 23, 2001] (Docket No. 227021). - In this case, the defendant filed a motion to suppress statement and this court held a hearing pursuant to *People v. Walker*, 374 Mich. 331; 132 NW2d 87 (1965). The parties stipulated that defendant was in custody as of 8:25 p.m. on October 8, 1999, and that he made a statement at 5:33 p.m. on October 11, at least 70 hours after his arrest. Defendant made a second

statement at 9:00 p.m. This court granted the motion pursuant to *People v. Whitehead*, 238 Mich App. 1 (1999), finding that no emergency or extraordinary circumstance existed to justify defendant's detention in excess of 48 hours without a judicial determination of probable cause. The Michigan Court of Appeals reversed because this court suppressed the statement solely on the basis of the delay. The Michigan Court of Appeals ruled that this court was required to consider the voluntariness of the statements based on the totality of circumstances and could not rely solely on delay.

People of the State of Michigan v. Derick Thompson, unpublished opinion per curiam of the Court of Appeals, decided [December, 10, 2002] (Docket No. 233317). - Following a jury trial the defendant was convicted of kidnapping, carjacking, armed robbery, and possession of a firearm during the commission of a felony. This case involved an appeal of this court's denial of the defendant's motion for a new trial. During voir dire, this court asked the jurors whether they had been the victim of a crime of violence. The jurors committed to serving as fair and impartial jurors during the voir dire. During the jury deliberations, the jury wrote, "we have a juror who admits being raped as a teenager. Does this affect her being a juror?" The defense counsel moved for a mistrial based on possible juror bias which this court denied. This court instructed the jury that they committed to be fair and impartial and ordered them to resume deliberations. The defendant was convicted and moved for a new trial on the basis that he was deprived the opportunity to dismiss the juror for cause or peremptorily and the juror potentially tainted the other jurors during deliberations. The Michigan Court of Appeals ruled that this court "abused its discretion in determining that the juror should not be excused without conducting further examination of the potentially biased juror to determine whether she could deliberate impartially."

People of the State of Michigan v. Jason Brown, unpublished opinion per curiam of the Court of Appeals, decided [February, 11, 2003] (Docket No. 236317).- In this case the defendant's carjacking and aiding and abetting an armed robbery convictions were affirmed; however, the Michigan Court of Appeals remanded the case back to this court for further fact-finding regarding sentence guidelines scoring.

People of the State of Michigan v. Walter Wright, unpublished opinion per curiam of the Court of Appeals, decided [October, 23, 2003] (Docket No.

240920). - In this case, the defendant filed a motion to quash the information and this court granted the motion dismissing the second degree murder charge. There was an issue as to whether or not the defendant had sufficient intent as an aider and abettor. The Michigan Court of Appeals reversed ruling that the magistrate did not abuse her discretion in binding over defendant.

People of the State of Michigan v. Mario Curvan, unpublished opinion per curiam of the Court of Appeals, decided [June, 29, 2004] (Docket No. 242376). - Following a jury trial, defendant was convicted of felony murder and armed robbery. In this case the Michigan Court of Appeals, held that it was a violation of the Double Jeopardy Clause of the United States Constitution and the Michigan Constitution to sentence defendant for felony murder and armed robbery when the armed robbery charge is the predicate felony for the felony-murder conviction. The Michigan Court of Appeals vacated the armed robbery conviction and sentence and remanded the case back to this court for modification of sentence. The prosecution has filed an application for leave to appeal to the Michigan Supreme Court.

3) *People v Manning*. 243 Mich. App. 615, 624 N.W. 2d 746 (2000).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) and unsuccessful candidacies for elective public office.

Not applicable.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
 - a1. whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
 - a2. whether you practiced alone, and if so, the addresses and dates;
 - a3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

A1-3 In April of 1984, I was hired as an associate attorney by Richard F.

Suhrheinrich (currently a senior judge for the 6th Circuit) for the law firm of Kitch, Suhrheinrich, Saurbier, & Drutchas. My practice involved litigating complex cases including medical malpractice cases and, periodically, product liability cases. The law firm is currently located at One Woodward Avenue, Tenth Floor, Detroit, MI 48226 (313) 965-7900. At the time I began my practice with the Kitch, Suhrheinrich law firm, the firm consisted of approximately 50 lawyers. When I left the firm in January of 1989, the firm, Kitch, Saurbier, Drutchas, Wagner & Kenney, employed over 100 lawyers.

Subsequently, in January of 1989, I left the Kitch, Saurbier law firm and I practiced with a very small law firm in Livonia, Michigan (Bloom & Kavanaugh, 39404 Seven Mile Road, Livonia, MI 48152) until April of 1990 when I joined the law firm of Cummings, McClorey, Davis & Acho, 33900 Schoolcraft Road, Livonia, MI 48150. The Cummings, McClorey law firm consisted of approximately 50 lawyers with a very diverse practice including governmental entities, insurance companies and individual litigants. I was a partner in the law firm at the time I was appointed Judge of the Wayne County Circuit Court in March of 1996 (Room 604, Frank Murphy Hall of Justice, 1441 St. Antoine, Detroit, MI 48226).

- b1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

When I initially began practicing law with the Kitch, Suhrheinrich law firm in April of 1984, I represented large institutions including hospitals. However, I also represented individual physicians and other individual litigants. During the time I practiced with the Cummings, McClorey law firm, my practice became more diverse including the representation of Schoolcraft College.

- b2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

When I left law practice in March of 1996, my practice included mostly individual litigants however I did represent institutional clients. I had an expertise in medical malpractice, products liability and complex litigation.

- c1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates. I was in court frequently.

c2. What percentage of these appearances was in:

(a) federal courts;

I had just a few cases in Federal court.

(b) state courts of records;

The vast majority of my practice was located in State Circuit Court.

(c) other courts.

Very little.

c3. What percentage of your litigation was:

(a) civil;

99%

(b) criminal

1%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Between 1988 and my appointment to the Wayne County Circuit Court, in March, 1996, I averaged 2 - 3 civil jury trials per year where I was either sole counsel or chief counsel.

5. What percentage of these trials was:

(a) Jury;

Essentially 100%

(b) Non-jury.

Very few, if any

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case;

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1.) *Walton vs. Michigan Osteopathic Hospital* – Case No. 92-219089 NH. This case was litigated in 1993 and 1994. The Defendant was Michigan Osteopathic Medical Center. I represented the plaintiff Estate. The case was brought against the attending psychiatrist for failing to diagnose and treat a 30-year old woman suffering from a severe manic depressive disorder who was 8 months pregnant and had committed suicide. She was survived by a minor 4 year old child. The case was rather complex involving issues of law and psychiatry. The case was tried to a jury in Wayne County Circuit Court. The verdict was no cause of action. The opposing counsel was John J. Ramar, Willmarth, Ramar & Paradiso, P.C. 535 Griswold, Suite 2550, Detroit, MI 48226 (313) 967-0466. The case was tried before Judge Andrea Ferrara.

2.) *In Re: Leonard Ingalls* – case number 91-11021SE. This will contest was litigated in 1992; Iosco County Probate Court. The Decedent Leonard Ingalls had a substantial estate and was survived by several grand daughters who saw him on a rather infrequent basis during the last few years of his life. A neighbor was able to have Mr. Ingalls change his will when he lacked capacity. I was able to very successfully litigate the case on behalf of the granddaughters, although one of the granddaughters filed a complaint with the Attorney Grievance Commission against me and co-counsel. The Probate Judge was William H. McCreedy. Co-Counsel attorneys included Robert Eppert (989) 362-8675, 1144 Westlake Street, P.O. Box 426, Tawas City, MI 48763 and Gary Sackett (734) 525-0432, 33470 Lyndon Street, Suite 200, Livonia, MI 48154. Opposing counsel was Thomas P. Huck, 314 Newman Street, East Tawas, MI 48730 (989) 362-4447.

3.) *Burleson vs. St. Joseph Hospital, Mt. Clemens* – Case No. 84-0090 NM. The case involved allegations of obstetrical malpractice brought by attorney Robert Tyler of the Sommers, Schwartz law firm, 2000 Town Center, Suite 900, Southfield, MI 48075 (248) 746-4088. Mr. Tyler alleged primarily that the nurses of St. Joseph Hospital were negligent in 1968 during the delivery of a child. At the time of the trial in the Spring of 1988 in Macomb County Circuit Court, the plaintiff was a 20-year old model who suffered from a palsy. I was able to successfully represent the nurses in a very difficult trial (because of the age of the alleged malpractice) and was able to obtain a no cause of action for the hospital. The trial judge was Judge Frederick Balkwill.

4.) *Shivers vs. Kenney* – This is a case I tried in Oakland County Circuit Court during the fall of 1988. Case No. 86-311416 NO. The plaintiff minor was bit in the face by a St. Bernard dog. The defendant alleged that the child

provoked the dog. I was able to obtain a verdict in favor of the minor child and was able to catch the defendant in several distinct discrepancies in trial testimony. The defendant testified that the minor child provoked the dog and there was a witness present who saw the event and would support the defendant's position. The defendant thought that the witness was out of the Country at the time of trial. I knew the witness was not out of the Country and would not support the defense's position. I called the witness during my rebuttal case. The trial Judge was David Breck. Defense counsel was Peter Fylonenko, 22878 Walsingham Drive, Farmington Hills, MI 48335 (248) 921-9896.

5.) *McDonald vs. Pontiac Osteopathic Hospital*; Case No. 84-273317 NM. This case involved allegations of emergency room and thoracic surgical malpractice brought by David Getto of the Sommers, Schwartz, Silver & Schwartz law firm, 2000 Town Center Southfield, MI 48075 (248) 355-0300. Mr. Getto, who is a nationally known trial attorney, alleged that the physicians of Pontiac Osteopathic Hospital were negligent in failing to timely diagnose and surgically repair a traumatic rupture of the aorta. As a result of the alleged negligence, 20-year old John McDonald was a paraplegic. Essentially, we were able to successfully argue on behalf of the doctors and the hospital that the doctors were not negligent because the surgical procedure performed on Mr. McDonald to repair the traumatic rupture of the aorta complied with a minority standard of care as recognized by Plaintiff's expert, Dr. Mark Orringer of the University of Michigan Hospitals. I was able to successfully represent my client Pontiac Osteopathic Hospital by getting Dr. Orringer to agree that there was minority standard of care after extensive research including the cross examination of Dr. Orringer with articles written not only by respected Thoracic surgeons, but also by Dr. Orringer as well. Co-Counsel included Cheryl Chandler 30850 Telegraph Rd. Ste 200 Bingham Farms, MI 48025 (248) 646-1514. The judge was Oakland County Circuit Court Judge Norman Lippitt (now retired) Address: Hyman, Lippitt 322 N. Old Woodward Ave. Birmingham, MI 48009 (248) 646-8292. The case settled.

6.) *Massie vs. South Macomb Hospital*; Case No. 82-3091 NM. This case was litigated in Macomb County Circuit Court. The judge was Raymond Cashen (deceased). The Plaintiff's attorney was David Christensen of the Law Firm of Charfoos & Christensen, 5510 Woodward Ave. Detroit, MI 48202 (313) 875-8080. Mr. Christensen alleged that the thoracic surgeon at South Macomb Hospital (our client) was negligent by performing a repair of an aortic tear by not using a shunt. As a result of the thoracic surgeon's negligence, it was alleged that Mr. Massie was paraplegic. The defense expert was Dr. Mark Orringer and, again, through extensive medical research we were able to get Dr. Orringer to concede that there was a

recognized minority that practiced the surgical procedure without using a shunt. Shortly after Dr. Orringer's deposition, the case resolved for a minimal amount. The case could have been the first time in decades that the defense of minority standard of care was successful in Michigan Courts. Co-counsel was Cheryl Chandler, 30850 Telegraph Road, Suite 200, Bingham Farms, MI 48025 (248) 646-1514.

7.) *Grossman vs. Abel*; Case No. 91-3169-GC – Attorney Matthew Abel, who was very active in the Livonia Bar Association, as well as representing clients through various pro bono programs was sued for a breach of contract by Mr. Grossman. Matthew R. Abel, 450 W. Fort St., Suite 200, Detroit, MI 48226 (248) 866-0864. Mr. Abel approached me to seek my advice regarding the lawsuit and I agreed to represent him at trial. The case was tried before Judge James McCann (retired), 32437 Five Mile Rd., Livonia, MI 48154 (734) 522-5860. Shortly before trial, we filed a counterclaim and I was able to obtain a judgment for Mr. Abel against Mr. Grossman. Opposing counsel was Michael W. Williams, 35560 Grand River Ave. #326, Farmington Hills, MI 48335; (248) 932-3390. Robert L. Wiggins, Jr. 28777 Telegraph Rd., Suite 2415 Southfield, MI 48034 (248) 262-3200.

8.) *Fischer v. St. Joseph Hospital*. Case No. 86-03551 NZ. This case was litigated in 1988 and 1989 before Macomb County Circuit Court Judge Frederick Balkwill. I represented St. Joseph Hospital. The plaintiff was an infant who was asthmatic and was found unresponsive in a hospital bed at age eight months. The issue was whether or not the medication which was prescribed for the child, theophylline, contributed to the S.I.D.S- like syndrome. The case involved multiple physicians being sued for medical malpractice as well as a drug company being sued for product liability. Both Plaintiff and Defendants retained nationally known experts. Extensive depositions regarding the medical issues and the product liability issues took place all over the country. The case had unique issues in the field of drug product liability and medical malpractice. Plaintiff's counsel was Michael Materna, 28051 Dequindre Madison Heights, MI 48071 (248) 543-8300. The defense attorneys included David Ottenwess and Lee Wulfmeier - Wulfmeier & Ottenwess, 535 Griswold St., Suite 850 Detroit, MI 48226 (313) 965-2121, Roy Christensen (deceased), Meria Larson- Blake, Karchner 535 Griswold St., Suite 1432 Detroit, MI 48226 (313) 961-7321. The case settled.

9.) *Theresa Nawrot v. Joseph Weiss, M.D.* - Case No. 91-107277 NM. This case was litigated in Wayne County Circuit Court. I was asked to litigate this case by Attorney Sean P. Kavanagh, Livonia City Attorney, 33470 Lyndon St., Livonia, MI 48154 (734) 425-6340. I represented Theresa Nawrot who was a diabetic who lost a part of her foot because of the professional negligence of Dr. Joseph Weiss, a rheumatologist. The case

resolved after I took the deposition of Dr. Weiss. Dr. Weiss' medical expert could not support his treatment of Mrs. Nawrot. The defense attorney was Richard M. O'Connor; O'Connor, De Grazia, Tamm & O'Connor, P.C. 4111 Andover Rd. Suite 300 E., Bloomfield Hills, MI 48302 (248) 433-2000.

10.) *Edmund Dresden, Personal Representative of the Estate of Lori Dresden vs. Detroit Macomb Hospital Corporation, also known as South Macomb Hospital*, Case Number 93-000072NH, 93-2578NH, 93-2216NH.

– This case was litigated in Macomb County Circuit Court before Judge Michael Schwartz. I represented the estate of Lori Dresden who was treated twice in the emergency room of South Macomb Hospital and was found dead shortly after her discharge from the emergency room. The emergency room physicians were sued for professional negligence. The case was settled as to South Macomb Hospital and the emergency room physicians. After resolution, I learned that a radiologist, Dr. Raymond Kurtzman, reviewed an x-ray misread by Dr. Marvin Gordon and destroyed the x-ray. Subsequently, I unsuccessfully sued Detroit Macomb Hospital Corporation and Diagnostic Radiology Consultants for Fraud. *Dresden v Detroit Macomb Hospital Corp et al* 218 Mich. App.292; 553 N.W.2d 387 (1996). Defense Counsel was John Ramar, 535 Griswold St., Suite 2550, Detroit, MI 48226 # 313-967-0466

18. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial of legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived)

The most significant legal activities that I have pursued as a lawyer would include service on panels of the Attorney Discipline Board for the State Bar of Michigan and service on the State Bar of Michigan Judicial Qualifications Committee. While serving on panels of the Attorney Discipline Board, I worked very hard to ensure that respondent attorneys and grievants received a complete and fair hearing. While I was a member of the State of Michigan Judicial Qualifications Committee, I worked very hard to see that all applicants for an appointment as

Judge of the various District, Circuit and Appellate Courts received a fair and objective hearing before the State Bar of Michigan Judicial Qualifications Committee.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm membership, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.
I am currently minimally vested in the State Judicial Retirement Fund.
2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.
I am unaware of any potential conflicts of interest should I be confirmed as a Judge of the Eastern District of Michigan. However, should any conflict arise I will follow the Code of Judicial Conduct.
3. Do you have any plans, commitments, or agreements to pursue outside employment with or without compensation, during your service with the court? If so, explain.
No
4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)
Please see attached Financial Disclosure Report.
5. Please complete the attached financial net worth statement in detail (add schedules as called for).
Please see attached Net Worth Statement
6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.
I was a candidate for election to the Wayne County Circuit Court in November, 1996 (successful). I was also a candidate for re-election to the Wayne County Circuit Court in November, 1998 (successful) and November 2, 2004 (successful). I served as Treasurer for Sean Kavanagh's unsuccessful judicial campaign for election to the Wayne County Circuit Court in 1986.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	1	076.00	Notes payable to banks-secured		
U.S. Government securities-add schedule			Notes payable to banks-unsecured		
Listed securities-add schedule			Notes payable to relatives		
Unlisted securities--add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid income and interest		
Doubtful			Real estate mortgages payable-add schedule	310	310.74
Real estate owned-add schedule	410	000.00	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property			Ford Credit/Lease	355	37
Cash value-life insurance			Public Service Credit Union	2700	00
Other assets itemize:			Marshall Fields	782	45
Janus Capital Group	286	34.38	Target/VISA	2900	00
MI State Judicial Pension	670	14.56			
MI Educational Savings Prog.	521	3.85	Total liabilities	3170	48.56
			Net Worth	1948	90.23
Total Assets	5119	38.79	Total liabilities and net worth	5119	38.79
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor		none	Are any assets pledged? (Add schedule)		none
On leases or contracts		none	Are you defendant in any suits or legal actions?		NO
Legal Claims		none	Have you ever taken bankruptcy?		NO
Provision for Federal Income Tax		none			
Other special debt		none			

Sean F. Cox

Real estate:

Personal Residence \$ 410,000.00

Real estate mortgages payable:

Mortgage \$ 265,300.00

Equity line \$ 45,010.75

AO-10 Rev. 1/2002		FINANCIAL DISCLOSURE REPORT Calendar Year		Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)
1. Person Reporting (Last name, First name, Middle initial) Cox, Sean F	2. Court or Organization USDCF - EDM	3. Date of Report 2-14-05		
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) US District Judge - Nominee	5. Report Type (check appropriate type) <input checked="" type="radio"/> Nomination, <input type="radio"/> Date <input type="radio"/> Initial <input type="radio"/> Annual <input type="radio"/> Final		6. Reporting Period 1/1/2004 to	
7. Chambers or Office Address Frank Murphy Hall of Justice 1441 St. Antoine, Room 604 Detroit, MI 48226	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____			
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.				

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ **NONE** - (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Judge	Wayne County Circuit Court

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ **NONE** - (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1. 1996	MI State Judicial Pension - payable upon termination of employment with the State of Michigan

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

☐ **NONE** - (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>GROSS INCOME</u> (yours, not spouse's)
1. 2003	Wayne County Circuit Court	\$139,919.00
2. 2005	Wayne County Circuit Court - County	YTD - \$ 3,512.83
3. 2004	SPOUSE - Nurse/Dearborn, Michigan	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Cox, Sean F

Date of Report
2-14-05

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

☐ NONE - (No reportable non-investment income.)

DATE	SOURCE AND TYPE	GROSS INCOME (years, not spouse's)
4. 2005	SPOUSE - Nurse/Dearborn, Michigan	
5. 2004	Wayne County Circuit Court	\$139,919.00
6. 2005	Wayne County Circuit Court - State	YTD - \$ 7,245.78

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Cox, Sean F

Date of Report
2-14-05

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE - (No such reportable reimbursements.)

SOURCE	DESCRIPTION
1. EXEMPT	

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ NONE - (No such reportable gifts.)

SOURCE	DESCRIPTION	VALUE
1. EXEMPT		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☒ NONE - (No reportable liabilities.)

CREDITOR	DESCRIPTION	VALUE CODE
1.		

FINANCIAL DISCLOSURE REPORT**Page 1 of 1**Name of Person Reporting
Cox, Sean FDate of Report
3-14-05**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Amount Code 1 (A-H)	Type (e.g. div. rent. or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1. Janus Capital Funds	A	Distribution	K	T	EXEMPT				
2. Michigan Education Savings Program	D	Distribution	J	T	EXEMPT				
3. State of Michigan - Judicial Retirement Plan		None	L	T	EXEMPT				

1. Income/Gain Codes:	A = \$1,000 or less (See Columns B1 and D4)	F = \$50,001-\$100,000	B = \$1,001-\$2,500	G = \$100,001-\$1,000,000	C = \$2,501-\$5,000	H1 = \$1,000,001-\$5,000,000	D = \$5,001-\$15,000	H2 = More than \$5,000,000	E = \$15,001-\$50,000
2. Value Codes:	J = \$15,000 or less (See Columns C1 and D5)	N = \$250,000-\$500,000	K = \$15,001-\$50,000	O = \$500,001-\$1,000,000	L = \$50,001-\$100,000	P1 = \$1,000,001-\$5,000,000	M = \$100,001-\$250,000	P2 = \$5,000,001-\$25,000,000	
3. Value Method Codes:	Q = Appraisal (See Column C2)	R = Cost (Real Estate Only)	U = Book Value	V = Other	S = Assessment	T = Cash/Market			
					W = Estimated				

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Cox, Sean F

Date of Report

2-14-05

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report)

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Cox, Sean F

Date of Report

2-14-05

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature

Sean F. Cox

Date

2/14/05

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

III. General Public

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each
During the time I practiced with the Cummings, McClorey law firm, the firm established a free legal aid clinic at St. Anne's Catholic Church in Detroit, Michigan which is a predominantly Hispanic Parish. During the time that I practiced law with the Cummings, McClorey law firm, I would frequently volunteer at the free legal clinic.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates - - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?
To my knowledge, I have never belonged to such an organization.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).
Candidates for the vacancy created by the resignation of Judge Zatkoff in the Eastern District of Michigan were required to submit a detailed response to a very extensive questionnaire. Subsequently, the candidates were interviewed for approximately an hour by a group of eight prominent attorneys including a county prosecutor. The candidates were rated on a not-qualified, qualified, well-qualified or exceptionally well-qualified scale. It is my understanding that the committee forwarded my name to President Bush with a recommendation. Subsequently, I was interviewed by White House Counsel and an attorney for the Department of Justice.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."
The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

5(a-e) It is not the role of the courts to legislate nor to act as the Executive. Judges should be bound by strict rules and precedent. The constitution is fundamental law. Judges ascertain the meaning of the constitution as well as the meaning of any particular act of the legislature. If there should happen to be an irreconcilable variance between the constitution and an act of a legislative body, the constitution is preferred to statute, i.e., the intention of the people to the intention of their elected agents. Judges should be interpreters, not makers of the law.

Senator BROWNBACK. Welcome. We are delighted to have you here.

Judge Ludington.

**STATEMENT OF THOMAS L. LUDINGTON, NOMINEE TO BE
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN**

Judge LUDINGTON. Good afternoon, Senator. It is kind of a pleasure. We have had a chance to introduce you here informally a minute ago, but I am joined this afternoon by my wife, Tina, who is present. Adjacent to her is Christopher Warren, and John Thomas on your right. Also with us this afternoon are my mother-in-law, Ms. Jane McGuire, and brother-in-law, Tim, and last but not least, my father, Jack Ludington.

[The biographical information of Judge Ludington follows:]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).

Thomas Lamson Ludington

2. **Position:** State the position for which you have been nominated.

United States District Court Judge, Eastern District of Michigan

3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.

**42nd Circuit Court
Midland County Courthouse
301 W. Main Street
Midland, MI 48640
(989) 832-6825**

4. **Birthplace:** State date and place of birth.

**December 28, 1953
Midland, Michigan**

5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

**Katrina Kay (McGuire) Ludington
Business Communications Leader
The Dow Chemical Company
2040 Dow Center
Midland, MI 48674**

Two dependent children

6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

University of San Diego School of Law, J.D., 1977-1979, degree received May 20, 1979

Summer degree program at the Institute on International and Comparative Law, Paris, France, 1978

Albion College, B.A. Cum Laude, 1972-1976, degree received May 9, 1976
(Sophomore year degree program: University of Sussex, Brighton, England, 1974-1975)

7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

I was elected to the 42nd Circuit Court for a six-year term beginning January 1, 1995. I was reelected for an additional six-year term beginning January 1, 2001. I was appointed Chief Judge for the 42nd Circuit Court in 1999. I was recently reappointed for another term as the Chief Judge of the 42nd Circuit Court.

I practiced with the law firm of Currie and Kendall, P.C., now known as Currie Kendall Polasky & Meisel, PLC, from 1980 until 1994 as an associate and later as a shareholder/ partner. I served as President of the law firm for six years before leaving for the bench. The firm maintains an office at 6024 Eastman Avenue, Midland, Michigan 48640. The office can be located by phone at (989) 839-0300.

I have served as a director or trustee of the following non-profit organizations:

Albion College (2000 to present)
Saginaw Valley State University Foundation (1998 to present)
Rollin M. Gerstacker Foundation (2000 to present)
Thomas L. Ludington Family Foundation (1999 to present)
Midland Area Community Foundation (1998-2001)
Junior Achievement of Midland County (1990-1992)
Big Brothers and Big Sisters of Midland County (1988-1990)

During the summers of 1976 and 1977, I directed the water-ski school for Culver Academies located in Culver, Indiana. My job responsibility was to supervise 12 instructors.

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

None.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

1. Institute on International and Comparative Law, Paris, France, 1978
2. Chairperson, Moot Court Board, University of San Diego School of Law, 1979
3. National Order of Barristers

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

1. State Bar of California, 1979
2. State Bar of Michigan, 1980 (Business Law Section and Litigation Section)
3. United States District Court, Eastern District of Michigan, 1982
4. Midland County Bar Association, President 1994 to 1995
5. Michigan State Bar Foundation Fellow
6. Officer, Midland County Bar Association Foundation (Midland Alliance for Justice Program)

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

1. State of California, 1979
2. State of Michigan, 1980
3. United States District Court, Eastern District of Michigan, 1982

There have been no lapses of membership.

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership

requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Present Association:

1. Trustee, Albion College Board of Trustees (Finance Committee)
2. Chairperson, Saginaw Valley State University Foundation
3. Director, Rollin M. Gerstacker Foundation
4. Director, Thomas L. Ludington Family Foundation
5. Member, Saginaw Valley Torch Club
6. Member, Midland Rotary Club
7. Advisor, Gerald R. Ford Institute for Public Policy and Service, Albion College
8. Advisor, Eagle Village
1. Member, First United Method Church, Midland, Michigan

Previous Association:

1. Chair, Michigan Attorney Disciplinary Board, Midland County (1984-1989)
2. Director, Midland Area Community Foundation (1998-2001)
3. Director, Midland County Republican Party (1992-1993)
4. Qualifications Review Committees resulting in nomination of Honorable Gerald E. Rosen and Honorable Gordon J. Quist
5. Visiting Nurses Association (1987-1989)
6. Junior Achievement of Midland County (1990-1992)
7. United Way of Midland County (1993)
8. Big Brothers and Big Sisters of Midland County (1988-1990)
1. Recordings for Recovery (1990-1994)
10. Midland County Economic Growth and Development Corporation (1992-1994)

None of these organizations has discriminated or is presently discriminating on the basis of race, gender or religion.

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

I wrote an article for our local newspaper that was published on September 19, 1999 describing changes in criminal law and sentencing and its impact on

county jails. The article, entitled *New Challenges to Managing County Jail Capacities in Michigan* is included at Appendix Exhibit A. I have developed materials for different courses. I have been unable to locate any of the course materials. The courses were as follows:

1. *Law and Banking*; Delta College (1983 and 1984)
2. *Emerging Theories of Lender Liability*; (taught course with attorney Morten Weldy (retired) in 1988, National Business Institute)
3. *Protection of Secured Interests in Bankruptcy in Michigan*; (taught course with attorney Rozanne M. Giunta, Lambert, Leser, et al., P.C., 916 Washington Ave., Ste. 309, P.O. Box 835, Bay City, MI 48708 (989) 893-3518, in 1991 for National Business Institute)
4. Chair, *Managing Partners Conference*, Law Practice Management Section, American Bar Association at the University of Michigan Business School, March, 1993.

Id served as a member of the Editorial Advisory Committee for the revised edition of Criminal Procedure; Monograph 6, Pre-Trial Motions published by the Michigan Judicial Institute in 2001.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

Healthy to my knowledge. November, 2001.

16. **Citations:** If you are or have been a judge, provide:

- (1) a short summary and citations for the ten (10) most significant opinions you have written;

1. *MS Development, Inc. v Auto Plaza of Woodhaven*, 220 Mich App 540; 560 NW2d 62 (1996). I was appointed several times to sit with the Michigan Court of Appeals. In this case, I worked with the Honorable Barbara B. MacKenzie (retired) in drafting the opinion of the Court. The case addressed a number of franchise and commercial law problems.

2. *Reno v Chung*, 220 Mich App 102; 559 NW2d 308 (1996). I wrote a dissenting opinion. The case addressed a question about municipal immunity for "public duties." The Supreme Court affirmed in part and reversed in part adopting part of the rationale of my earlier opinion. *Reno v Chung*, 220 Mich App 102; 559 NW2d 308, *aff'd*, in part sub nom, *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999).
3. *Henry L. Meyers Moving and Storage v Michigan Life and Health Insurance Guaranty Association*, 222 Mich App 675; 566 NW2d 632, Pens. Plan Guide (CCH) P23936K (1997). I worked extensively with the Honorable E. Thomas Fitzgerald, 109 West Michigan Ave., P.O. Box 30022, Lansing, MI 48909-7522, (517) 373-2195, in drafting the opinion of the Court. My primary responsibility was development of the Employee Retirement Income Security Act (ERISA) issues.
4. *Haskin v Gerace Construction Company, Inc.*, Midland County Circuit Court No. 96-5966-NO-L. Appendix Exhibit B. The opinion addresses the defendant's request for a new trial.
5. *Weidner v Cholcher, John Doe, Bay Area Narcotics Enforcement Team*, Midland County Circuit Court No. 95-4492-NO-L. Appendix Exhibit C. The case addressed the legal merit of a cause of action asserted under the Michigan constitution.
6. *Merritt F. Schlaak v John Lozak, D.O.*, Midland County Circuit Court No. 97-6786-NH-L. Appendix Exhibit D. The opinion addresses the constitutionality of legislatively imposed ceilings on non-economic damage awards.
7. *Dow Chemical Company v Standard Fruit Company*, Midland County Circuit Court No. 98-7861-CK-L. Appendix Exhibit E. The opinion addresses the application of Michigan's Long-Arm statute to a foreign corporation.
8. *Jenny Wallace v Ayres Associates*, Midland County Circuit Court No. 97-7093-NO-L. Appendix Exhibit F. The opinion addressed multiple cross-motions for summary judgment in a complicated case involving a construction accident that caused the plaintiff's death.

9. ***Linda Stanek v Midland County Central Dispatch Authority*, Midland County Circuit Court No. 96-5049-NI-L. Appendix Exhibit G. The opinion addresses the statutory construction of various statutes involving the potential governmental immunity of one of the defendants.**
 10. ***People v Cappyak*, Midland County Circuit Court No. 95-7566-FH-L. Appendix Exhibit H. The opinion addresses the scientific reliability and, therefore, the admission into evidence of the test results of an infrared breath analysis instrument.**
- (2) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

I have not had any judicial decision significantly criticized on appeal. To the best of my memory, and that of my staff, the following cases were reversed on appeal in unpublished opinions:

1. ***Judy Holley v Clark Seed, Inc. and Caudill Seed Co.*, Midland County Circuit Court No. 99-009885-NO-L. Appendix Exhibits I. The case involved a plaintiff who contracted salmonella food poisoning. The source or cause of the poisoning could not be identified except with epidemiology information gathered from a number of sources. I applied a discovery rule for the commencement of the statute of limitations when the cause of the poisoning could be identified. The Court of Appeals held the statute of limitations commenced when the plaintiff knew she was injured.**
1. ***Woodview Mobile Associates v Thomas McCann*, Midland County Circuit Court No. 98-007639-CZ-L. Appendix Exhibits J. The case involved the interpretation of a contract for the sale of mobile home park.**
2. ***B.B. Banucks, Inc. v City of Midland*, Midland County Circuit Court No. 96-005043-CZ-L. Appendix Exhibits K. The issue on appeal involved interpretation of a City Ordinance requiring reimbursement to developers for oversized improvements required by the City Building Code.**
3. ***People of the State of Michigan v Kyle M. Billington*, Midland County Circuit Court No. 97-008568-FH-L. Appendix Exhibits L. The appellate issue involved the interpretation of a statutory provision for timely arraignments and its application to a procedure**

we adopted in Midland County to permit Midland District Courts to conduct felony arraignments.

4. *Tuscola County Board of Commissioners and Tuscola County Register of Deeds v Tuscola County Abstract Company*, Tuscola Circuit Court No. 97-016113. Appendix Exhibits M. I was assigned to the case on remand from an earlier appellate decision. The immediate question involved the interpretation of a state statute addressing fees that might be charged to customers for services rendered by register of deeds offices.
 5. *Reno v Chung*, 220 Mich App 102; 559 NW2d 308 (1996). I wrote a dissenting opinion. The case addressed a question about municipal immunity for "public duties." The Supreme Court affirmed in part and reversed in part adopting part of the rationale of my earlier opinion. *Reno v Chung*, 220 Mich App 102; 559 NW2d 308, aff'd, in part sub nom, *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999).
- (3) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

In addition to a number of the previously cited opinions, I have recently written two opinions in *Associated Builders & Contractors, Saginaw Valley Area Chapter v Kathleen Wilbur, Director of the Michigan Department of Consumer & Industry Services*, et al., Midland County Circuit Court No. 00-2512-CL-L, a case challenging the constitutionality of Michigan's Prevailing Wage Act. The first opinion addresses whether the case presented justiciable issues. The second opinion addresses the merits of the case in conjunction with Defendant's Motion for Summary Disposition. Copies of the opinions are included at Appendix Exhibits N and O.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

17. **Public Office, Political Activities and Affiliations:**

- (1) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

None.

- (2) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

18. **Legal Career:** Please answer each part separately.

- (1) Describe chronologically your law practice and legal experience after graduation from law school including:

- (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

I did not clerk for a judge.

- (2) whether you practiced alone, and if so, the addresses and dates;

I did not practice alone.

- (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

I practiced with the law firm of Currie and Kendall, P.C., now known as Currie Kendall Polasky & Meisel, PLC, 6024 Eastman Avenue, Midland, MI 48640, from 1980 until 1995 as an associate and later as a shareholder/partner. I served as President of the law firm for six years before leaving for the bench.

- (2) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

The most significant component of my practice involved representing banks and other businesses in state and federal courts in Michigan, as well as California. My practice involved a wide-range of substantive law issues including banking law, securities law, bankruptcy law, the uniform commercial code and employment law questions. I have also represented many individual clients with diverse problems including employment

discrimination, personal injury, products liability, and environmental responsibility.

- (1) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I really had no "typical" client. I primarily represented business entities in bankruptcy and related proceedings but I also represented many individual plaintiffs with legal problems ranging from divorce to insurance claims.

- (3) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

I appeared in court once a week.

- (2) Indicate the percentage of these appearances in

1. federal courts;
2. state courts of record;
3. other courts.

- A. 45%
4. 55%
5. 0%

- (3) Indicate the percentage of these appearances in:

- (A) civil proceedings;
- (2) criminal proceedings.

1. 98%
2. 2%

- (3) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

Because the law firm I was associated with no longer maintains many of the files and records that were generated during my practice, I cannot answer the question precisely. I would estimate that I was chief counsel in approximately thirty state and federal court cases tried to verdict in the five-year period before I became a judge. In addition, I would estimate that I

tried approximately fifteen bankruptcy adversary proceedings in Michigan and California.

- (4) Indicate the percentage of these trials that were decided by a jury.

Approximately ten percent of the cases were jury tried.

- (5) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have not practiced before the United States Supreme Court.

- (6) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

When I was practicing law, I made a concerted effort to assist clients with various legal problems who could not afford representation. I would estimate that I represented an average of four clients a year who were unable to afford representation.

Since I have been on the bench, I actively assisted in the organization of a foundation for our local Bar Association, which in turn, conducts a very active program to provide legal representation to indigent parties. Our budget this year should approach \$50,000.00. We are assisting approximately 70 clients a year. The organization is called the Midland Alliance For Justice.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

- (1) the citations, if the cases were reported, and the docket number and date if unreported;
- (2) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
- (3) the party or parties whom you represented; and

- (4) describe in detail the nature of your participation in the litigation and the final disposition of the case.

The law firm I was associated with no longer maintains many of the files and records that were generated during my practice. Working from memory and the records I have been able to locate, I would identify the following five cases as significant matters, in terms of my development as a lawyer. They also reflect the diverse nature of my practice over the years.

1. *People v Bentley*, 121 Mich App 36; 328 NW2d 389 (1982).

Opposing counsel: Midland County Prosecuting Attorney's Office. The Midland County Prosecutor is Norman W. Donker, Midland County Courthouse, 301 W. Main Street, Midland, MI 48640. Telephone number is (989) 832-6722.

Court: 42nd (Midland) Circuit Court, Honorable Tyrone Gillespie (deceased); and the Michigan Court of Appeals.

Client: Defendant, Murray James Bentley.

Case Summary: In late 1980 I was appointed by the Circuit Court to represent Mr. Bentley, who had recently been returned to Midland by bail bondsmen from a Maui Correction Center. Mr. Bentley left Michigan with six criminal cases in various procedural stages of completion. The most significant case was a perjury case that was about to be tried when Mr. Bentley left the jurisdiction and that I eventually tried before Judge Gillespie. The complaining witness was Circuit Court Judge David DeWitt and the witness list was made up of some of our finest local trial attorneys. I moved for dismissal of all of the cases arguing that the Midland County Prosecuting Attorney's Office had violated Mr. Bentley's rights under the Interstate Agreement on Detainers. Our motion was denied by the trial court. The Michigan Court of Appeals ultimately reversed the trial court concluding that the appropriate sanction to be imposed when officials of a custodial state do not comply with the agreement, is dismissal of all charges.

I was responsible for representing Mr. Bentley before the trial court and the Michigan Court of Appeals. The case introduced me to the fact that I would be called upon to take principled,

often unpopular positions, in order to effectively represent my clients.

2. *Nicolas A. Rapanos v John A. Rapanos, Rapanos Enterprises, et al.*; 42nd (Midland) County Circuit Court.

Co-Counsel: Mr. William H. Merrill was chief counsel. He was a former U.S. attorney and Watergate Prosecutor and candidate for the Michigan Supreme Court. Mr. Merrill is incapacitated as a result of a disabling stroke.

Mr. Leo A. Farhat (deceased)

Opposing Counsel: Mr. Leopold P. Borrello, current Circuit Court Judge, Saginaw County Courthouse, 111 S. Michigan Avenue, Saginaw, MI 48602 (989) 790-5470.

Court: 42nd Circuit Court, Honorable David Scott DeWitt, now associated with Handlon, Eastman and DeWitt, P.C., Courthouse Square Building, 240 West Main Street, Midland, MI 48640 (989) 631-5490 and later by assignment, the Honorable Peter D. O'Connell, Michigan Court of Appeals, 109 West Michigan Avenue, P.O. Box 30022, Lansing, MI 48909 (517) 373-9847.

Client: Plaintiff, Nicolas A. Rapanos

Case Summary: Mr. Merrill and Mr. Farhat were my supervising attorneys. They were responsible for in-court presentations and witness examination. I was responsible for organization of a vast amount of legal and accounting information as well as the research and writing. The case concerned two brothers' ownership of over 200 parcels of real estate, as well as, the ownership of five corporations with an economic value of more than \$20,000,000.00. The trial consumed more than thirty days of time in 1982. Ultimately, our client prevailed based upon a complex presentation of facts and financial analysis that explained their underlying agreement to be equal owners of the property, despite the manner in which their records had been maintained. The trial court opinion was sustained on appeal in an unpublished, but frequently cited opinion.

3. *Au Investors v Au Magnetics and Robert Graham and In re: Au Magnetics Chapter 11 Proceeding.*

Opposing Counsel: Mr. James Baskin, The Baskin Law Firm, 300 W. 6th Street, Ste. 1950, Austin, TX 78701. Telephone number is (512) 381-6301.

Court: Securities action litigated in the United States District Court, Southern California and later involuntary Chapter 11 proceeding and related adversary proceeding was litigated in the U.S. Bankruptcy Court in San Diego.

Client: Herbert Dow and eleven investors from numerous states and countries.

Case Summary: I represented eleven investors in a securities fraud and racketeering lawsuit commenced in approximately 1991. The Defendant was a gentlemen who had represented his intentions to organize a private placement investment to commercialize a chemical process to extract gold from other mineral interests. Mr. Graham was well known in Southern California and the case received considerable attention in the San Diego and Los Angeles press. The securities case resolved shortly before trial. Mr. Graham later absconded and has never been located to today's date. Our clients' financial settlement was secured by real estate in Southern California, a maritime lien on a 300' ship and a collateral assignment of certain securities. An involuntary bankruptcy was later instituted and an adversary proceeding commenced challenging the secured settlement as a preferential transfer. Again, the adversary proceedings was resolved shortly before trial. The initial litigation required that we address a number of complex state blue sky law issues, federal securities law issues and international law questions. I had to develop a computerized system for storing and indexing extensive documentation. The later adversary proceeding also involved a series of complex securities and bankruptcy law issues.

4. *Irving G. Snyder and Diamond S., Inc. v Fred G. Davis and Maria T. Davis; Midland County Circuit Court.*

Opposing Counsel: Mr. Allan W. Schmid, Schmid Law Office, PLLC, 255 N. Center Road, Saginaw, MI 48603-5847 (989) 799-4641.

**Mr. Wesley P. Hackett, Jr., 1650 Kendale Boulevard, Ste. 105,
East Lansing, MI 48823-2076 (517) 332-8822.**

**Court: 42nd (Midland) Circuit Court, Honorable Thomas A.
Beale, 5012 Candace Dr., Midland, MI 48640 (989) 631-0308.**

Client: Plaintiff, Irving G. Snyder.

Case Summary: I represented the Plaintiff, a gentleman who had acquired approximately 60 acres of property from the Defendants' predecessor. In an earlier case, the Davis' challenged the propriety of my client's purchase of the property from the Defendants' predecessor. The case was resolved against the Defendants. The Defendants continued to maintain an adverse interest to a parcel of property adjacent to a river that separated the parties' real estate. I commenced an action on behalf of my client to quiet title to the property adjacent to the river. We included a cause of action for the Defendants' malicious prosecution of the earlier action. The case was successfully tried to a jury for a verdict of approximately \$125,000 on the malicious prosecution claim alone. The Court of Appeals' decision, sustaining the jury's verdict, while unpublished is also often cited for its development of the relationship between the statutory provisions addressing frivolous actions and the common law cause of action for civil malicious prosecution. I represented the client before the trial court and the Court of Appeals.

5. ***Philip R. Duggan, et al. v Clare County Board of Commissioners, Waste Management of Michigan, Inc. / Clare v Waste Management of Michigan, Inc.; 203 Mich App 573; 513 NW2d 192 (1994).***

Co-Counsel: Mr. David A. Domzal (in-house counsel at the time but now in private practice), Williams Acosta, PLLC, 660 Woodward Ave., Ste. 2430, Detroit, MI 48226 (313) 963-3873.

Opposing Counsel: Mr. Larry A. Salstrom, Cohl, Salstrom, Stoker and Aseltyne, P.C., 2127 University Park Drive, #340, Okemos, MI 48864-3975 (517) 347-1462.

Court: 55th (Clare) Circuit Court, Honorable Kurt N. Hansen, Clare County Courthouse, 225 W. Main St., P.O. Box 438, Harrison, MI 48625 (989) 539-7131 or (989) 426-9237.

Client: Waste Management of Michigan, Inc.

Case Summary: In June 1990 Clare County sold a parcel of real estate to Waste Management for a landfill site, subject to an Operation and Development Agreement. Two similar lawsuits were later begun by groups of citizens in the Clare County Circuit Court challenging the Solid Waste Management Plan and the development and operation of the landfill by Waste Management. The litigation raised questions to be addressed by the Michigan Solid Waste Management Act, the Michigan Environmental Protection Act and the Federal Resource Conservation and Recovery Act, Subtitle D. Also *Fort Gratiot Sanitary Landfill, Inc. v Department of Natural Resources*, 504 US 353; 112 Sct 2019 (1992) was released during the course of the Clare County litigation finding that individual states were restricted from regulating interstate transportation and disposal of solid waste by the commerce clause of the United States Constitution. I was chief trial counsel. The cases were challenging because of the necessity to manage the complex legal issues associated with the litigation on the one hand, while also maintaining continued efforts to address the citizens' concerns in non-litigation forums.

As previously indicated, because of the passage of time and the loss of records, it is difficult for me to identify further cases. While the focus of my practice in later years was in commercial litigation, I maintained a general practice working with a broad-range of people and legal problems. The following are attorneys or Judges who I have practiced with over the years:

Ms. Charlotte L. Allen
Allen & Leapheart
112 Dartmouth Drive
Midland, MI 48640
(989) 832-8096

Mr. Thomas E. Bock
817 Washington Ave., #300
P.O. Box 879
Bay City, MI 48708
(989) 892-6016

Mr. William A. Brisbois
William Brisbois & Associates, PLLC
607 S. Michigan Avenue
Saginaw, MI 48602
(989) 799-6000

Honorable Paul J. Clulo
42nd Circuit Court
301 W. Main Street
Midland, MI 48640
(989) 832-6830

Ms. Susan M. Cook
Lambert, Leser, et al.
916 Washington Ave., Ste. 309
P.O. Box 835
Bay City, MI 48708
(989) 893-3518

Mr. Robert L. Donoghue
Donoghue Law Office
120 McDonald Street
P.O. Box 210
Midland, MI 48640
(989) 631-2660

Ms. Rozanne M. Giunta
Lambert, Leser, et al.
916 Washington Ave., Ste. 309
P.O. Box 835
Bay City, MI 48708
(989) 893-3518

Mr. Stephen E. Glazek
Barris, Scott, Denn & Driker, PLLC
211 W. Fort St., Floor 15
Detroit, MI 48226
(313) 965-9725

Mr. Geoffrey K. Rettig
Law Offices of Joseph T. Barberi, P.C.
300 S. University Avenue
Mt. Pleasant, MI 48858
(989) 773-3423

Honorable Kenneth W. Schmidt
18th Circuit Court
1230 Washington Ave., Ste. 209
Bay City, MI 48708
(989) 895-4270

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

No.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

Yes, I represented a company, Amigo Sales, in a complicated case against a partially affiliated corporate Defendant in 1988. The Defendant filed a counterclaim in the case. The case was mediated and an award entered on the complaint claim for \$95,000.00 and a separate award for \$396,000.00 was entered on the counterclaim pursuant to MCR 2.403(K)(2). My client, with my advice, accepted the award on the complaint and rejected the award on the counterclaim. Six months later, a Michigan Court of Appeals' panel interpreted the Court Rule to require a single response to the net amount of the separate awards. Several months after the appellate decision was released, Defendant moved for judgment against my client on the "net" award (\$301,000.00), contending my client should be "deemed" to have accepted same. A Saginaw County Circuit Court Judge granted the motion. My client was unable to secure an appellate bond and later filed suit against my firm and me (Saginaw County Circuit Court No. 91-46997-NM) in November of 1991 contending that we should have foreseen the appellate interpretation and advised them of the risk. The case, which was defended by our carrier, settled for \$25,000.00 in November of 1994.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present

potential conflicts of interest during your initial service in the position to which you have been nominated.

I presently monitor new civil cases for any possibility of conflict of interest as a state judge. In some cases where I believe that my disqualification is not a debatable point under controlling law, I will disqualify on my own motion. My wife and I have narrowed our security investments to reduce the possibility of conflicts. I also automatically disclose any debatable conflict to legal counsel as soon as it is identified. Apart from my wife's employment and/or our passive savings investment in traded securities, I don't anticipate any potential conflict of interests. I do intend to adhere to all statutory and ethical principals addressing conflicts of interest.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

A financial disclosure report is attached.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

A net worth statement is attached.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

- (1) If so, did it recommend your nomination?

Yes.

- (2) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I was interviewed by the Committee that was organized by Senator Levin in 1998, as well as the Committee that was organized by

President Bush's administration in 2001. I was interviewed by the Department of Justice and Federal Bureau of Investigation and nominated on September 12, 2002.

- (3) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

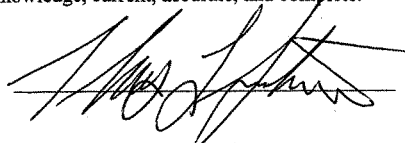
ASSETS			LIABILITIES		
Cash on hand and in banks			Notes payable to banks-secured		
\$111,076.70			\$36,000.00 (GMAC)		
U.S. Government securities-add schedule			Notes payable to banks-unsecured		
N/A			N/A		
Listed securities-add schedule			Notes payable to relatives		
\$1,717,163.77			N/A		
Unlisted securities-add schedule			Notes payable to others		
N/A			N/A		
Accounts and notes receivable:			Accounts and bills due		
N/A			N/A		
Due from relatives and friends			Unpaid income tax		
N/A			N/A		
Due from others			Other unpaid income and interest		
N/A			N/A		
Doubtful			Real estate mortgages payable-add schedule		
N/A			\$181,500.00		
Real estate owned-add schedule			Chattel mortgages and other liens payable		
\$710,000.00					
Real estate mortgages receivable			Other debts-itemize:		
N/A					
Autos and other personal property					
\$90,000.00					
Cash value-life insurance					
\$60,132.09					
Other assets itemize:					

				Total liabilities			
				\$217,500.00			
				Net Worth			
				\$2,470,872.56			
Total Assets				Total liabilities and net worth			
\$2,688,372.56				\$2,688,372.56			
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)			
N/A				No			
On leases or contracts				Are you defendant in any suits or legal actions?			
N/A				No			
Legal Claims				Have you ever taken bankruptcy?			
N/A				No			
Provision for Federal Income Tax							
N/A							
Other special debt							
N/A							

**QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE**

AFFIDAVIT

I, Thomas L. Ludington, being duly sworn, hereby state that I have read and signed the foregoing Questionnaire for Nominees Before the Committee on the Judiciary and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



SUBSCRIBED AND SWORN TO before me this 7th day of January, 2003.



Notary Public

V.L. MILLER
Notary Public
Midland, Michigan
My Commission Expires
June 25, 2004

Senator BROWNBACk. Welcome, all. We are delighted to have your families here. Being a person on the bench, being a judge, is a high responsibility and it involves the whole family. So I am delighted that all of you could join in this affair.

Ms. Ikuta, we would be happy to receive your statement if you have a statement—excuse me; I am jumping ahead of things. We normally swear in our witnesses for the bench, so if you would all rise and raise your right hands?

I promise to tell the truth, the whole truth and nothing but the truth, so help me God.

Ms. IKUTA. I do.

Judge COX. I do.

Judge LUDINGTON. I do.

Senator BROWNBACk. Thank you. You may be seated.

Ms. Ikuta, do you have a statement that you would like to enter into the record or to state here?

Ms. IKUTA. I don't have an opening statement other than to thank the President for nominating me and the Committee for having these hearings.

Thank you.

Senator BROWNBACk. We will have a few questions.

Judge Cox, do you have a statement?

Judge COX. Senator, I would like to thank the Committee very much for having this hearing today. It is a great honor to be before you. I would like to thank President Bush for the honor that he has given to me and my family of nominating me for the Eastern District of Michigan, and I would also like to thank Senator Levin and Senator Stabenow for taking time from their busy schedules to come in here before this Committee and introduce me, as well as Judge Ludington.

Thank you very much.

Senator BROWNBACk. Thank you.

Judge Ludington.

Judge LUDINGTON. Senator, I would echo my colleagues. We are all very appreciative of the President's nomination, as well as the fact of all the cordiality you have extended to us this afternoon.

Senator BROWNBACk. We are delighted to have you here.

Ms. Ikuta, let me start with you on this, and I am sure you have had this question in a number of the screenings that you have gone through thus far. There have been a lot of questions in the political debate about the role of the judiciary in the country and in the government today, and it has been the subject of a lot of political debate and it has been a subject of a lot of personal debate.

Could you outline for me and for this Committee your view of the role of the judiciary in the government and in this society?

Ms. IKUTA. Thank you very much, Senator, for that question. I see the role of the judge in our system as interpreting the law, the precedents of the Supreme Court and the judge's circuit, and applying those laws impartially and fairly to the legal issue before the court.

Senator BROWNBACk. Judge Cox.

Judge COX. Senator, the role of the judiciary is to follow the law, not to make the law. As a judge, it is incumbent upon a judge to follow and respect precedent and it is incumbent upon a judge to

follow statutory law. The statutes are presumed to be valid. Again, the role of a judge is not to make the law. The judge follows the law.

Senator BROWNBACK. Judge Ludington.

Judge LUDINGTON. Again, in many respects I would echo a lot of the things that my colleagues have added. I think what is important, and I would add perhaps uniquely true with trial judges, is the fact that there has to be a certain reservation in understanding the role of the judge in terms of constitutional process and understanding the limits, the appropriate limits of the types of decisions that we can make. We can't solve every problem. It is very important that we understand in a principled way what our role in the system is and be sure that we limit ourselves within that context.

Senator BROWNBACK. Why do you think we have gotten even to this debate today? I mean, why is this such a big political issue about the role of the judiciary in this society today? You have been around courts and judges all your life. You have watched the political system, each of you. We didn't used to debate this point or even raise it. Why are we where we are today?

Ms. IKUTA. Senator, that is a very thoughtful question and it is an important issue. I know there is a lot of concern and controversy about what constitutes judicial activism, and it highlights the importance of judges following the rule of law and applying that law in a neutral and impartial way.

Senator BROWNBACK. But why did we get so fired up about it? Are we taking everything to the courts instead of the legislatures now, or why is it so big as an issue?

Judge Cox, do you have a thought, or Judge Ludington?

Judge COX. Well, Senator, again, the role of the judge in society, in our jurisprudence, is to follow law, to respect precedent. It is not the role of the judge to legislate. Maybe if the judge is legislating, we have the issue. If the judge is respecting precedent, following precedent and following the law, we don't have the issue; we don't have the debate.

Senator BROWNBACK. Judge Ludington, you have watched the system. Why are we debating this now?

Judge LUDINGTON. Well, I think part of it, in my view, is the fact that we have an increasing number of societal problems that are being brought to courts. And in many cases, there are instances where people have been injured, where there is at least some merit to the concerns that bring them to court. And I can make the personal observation that there are a lot of circumstances, particularly with trial courts, where you are trying to apply the law in a way in which you simply have to draw some limits according to the law in reaching conclusions.

But the change, I think, reflects an increasing demand being placed on courts to address ever wider ranges of issues, and so it becomes particularly important, in my judgment, for the trial court to have a good understanding of the law and its limits, and it isn't always necessarily easy to apply that.

Senator BROWNBACK. Now, you will go from a State court, both of you, to a Federal court. So you go from a court of general jurisdiction to a court of limited jurisdiction. Is that going to be difficult for you to show judicial restraint, coming from where you come

from to where you are going to, from State court to the Federal court?

Judge LUDINGTON. I guess my own observation would be probably somewhat to the contrary. We work with, in many respects, a really wide range of human issues, certainly, in a court of general jurisdiction in the State. So we have been tested in terms of our ability to fairly, but nevertheless impartially apply the law, and I think we will look back on it as good training for the Federal bench, as well.

Senator BROWNBACK. When we had the Alito and the Roberts hearings, which I thought were outstanding hearings and a couple of outstanding nominees, one of the things that was really striking to me is that you look at our system and there are limits on the Congressional power. The President can veto the bill. The courts can declare it unconstitutional. There are limits on Presidential power. Congress can not appropriate the money. The court can say that what the President is doing is unconstitutional.

Then I asked both Judge Roberts and Judge Alito what is the restraint on the court's power. And they didn't want to say, well, the Congress could not appropriate the money, which they would look at, or that there were constitutional restraints. They said, well, the restraint on the court is the court itself; it is judicial restraint.

To me, it wasn't a very satisfying answer, frankly, because everybody else has constraints within the system, and then to say, well, the court has to restrain itself—and maybe I look at it saying, well, that is like asking Congress to restrain itself. You know, there are a lot of people that say, well, that is pretty tough for a body to do. Yet, in many respects that is the first-line answer, and if we don't have a court that can adequately look at itself as with limited jurisdiction and restrain itself, then you find the other two branches of Government being pushed by the populace to do what they can to restrain the court.

Then you get in these big kind of global-proportion shoving matches of who has what authority to be able to do what. It seems like to me that is the era we are in now where you have got the legislative, in particular, pushing back against the judicial. And there has always been a traditional competition between the legislative and the executive branch, all of which I think is healthy in a system that tries to have checks and balances and has limited authority and the people have the broad authority.

But I just say it to you because I think it really is up to the court to restrain the court, by and large, and if the court does that, these aren't issues. If the court doesn't do that, then they get thrown into the political process and it becomes a much more difficult field.

Ms. Ikuta, let me ask you about the environmental law area. Apparently, that has been an area of expertise and special interest for you.

Ms. IKUTA. Yes, sir.

Senator BROWNBACK. What particular area in the environmental field, or is it just broadly that you have been very active in the environmental field?

Ms. IKUTA. At present, as the General Counsel and Deputy Secretary in Governor Schwarzenegger's administration, we have been active in implementing the Governor's policy in trying to protect

natural resources and open space and preserve agricultural land. That has been an area of great interest for me.

Senator BROWNBACK. What drew you into the field? Is it a personal interest of yours, environmental law?

Ms. IKUTA. There were a range of factors that drew me into that field. I was interested in stewardship of the land, air and water, but also I really enjoyed the interrelation of Federal, State and local laws. It was a very challenging area and interesting for me.

Senator BROWNBACK. Is that going to be one that will be hard for you to set aside some of your past work and background in serving on the Ninth Circuit Court or is it one you feel like you are going to be able to resolve these cases fairly, because I guess you are going to receive a fair number of environmental cases and litigation coming up at the circuit court level?

Ms. IKUTA. Thank you, Senator, for giving me the opportunity to address that question. In fact, throughout my career my function has been to analyze case law and statutory law and advise clients very neutrally as to what the law requires. So I think my training and background actually would stand me in good stead if I am so fortunate to be confirmed.

Senator BROWNBACK. And you don't believe you will have any difficulty adhering to a fair decision and not your own personal opinions or cases that you have been involved in move you on those?

Ms. IKUTA. No, I would have no trouble putting aside any knowledge or background that I have on issues and applying the law and the precedent fairly and impartially.

Senator BROWNBACK. I am delighted to have your expertise coming forward, frankly. I mean, that is good to have that kind of expertise. It is also one, though, that people always want to make sure they get a fair hearing in front of the courts and an unbiased set of minds to review a case. I know you are well aware of all of that.

I want to thank all of you for coming forward. You have been through extensive background checks. You have been through extensive political vetting, I guess, in the process. I apologize if the process has been too intrusive for you, but this is kind of the one juncture where the policymakers get the shot that they can at the bench. So everybody then wants their shot at this and to see that the person has a good judicial temperament, has a first-class mind, and will hear things fairly.

Everybody has their different interpretation of what fair, I guess, is in the system, but at the end of the day we want good judges that people can respect and look up to and believe that they are getting a fair case from, and I know each of you will do that.

To your families, I want to thank you for allowing them into public service. We know you don't do it for the money. That is not part of it, but being a judge is a vaulted position in this society. Particularly at the district level, for most cases you are the final arbiter on people having major disputes that have changed and impacted their lives, their companies, their group, whatever the case might be. You are it. A lot of cases do get appealed, but as you know, most don't, and so you are the final arbiter.

So they have to look to you and say, OK, this person I trust to be fair. I don't want him to be on my side and I don't want him to be—well, I probably do want him to be on my side, but I know that is not fair completely. I just want somebody that will be fair in this system, good temperament, good mind, that I can trust. It is based on that trust that the system even works.

So I really do commend you for coming forward to do that, for going through the process, as difficult as it can be. God bless you for serving. I want to wish you all the best. I don't anticipate any problems with this moving forward, but we have had difficulties moving judges forward the past several things. So things could stall, but I wouldn't anticipate any in this.

Thank you all very much for coming. Thank you for your families. If you have additional statements to put forward, the record will remain open the requisite number of days so that you could put those forward if you would choose to.

Judge COX. Thank you, Senator.

Ms. IKUTA. Thank you, Senator.

Judge LUDINGTON. Thank you.

Senator BROWNBACK. Thanks for being here.

Next, I want to call up Kenneth Wainstein, nominated to be Assistant Attorney General for the National Security Division. The USA PATRIOT Improvement and Reauthorization Act of 2005 created a new National Security Division within the Department of Justice, to be headed by a Senate-confirmed Assistant Attorney General for National Security to head the division.

The key functions assigned to the new division and to its assistant attorney general include working with the Director of National Intelligence, unifying all intelligence operations within the Department under one common chain of authority, and handling Foreign Intelligence Surveillance Act responsibilities on behalf of the Attorney General.

These reforms were aimed at implementing some of the important recommendations of the 9/11 Commission and the Commission of the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, commonly known as the WMD Commission.

Kenneth Wainstein has been nominated to be the first assistant attorney general for the newly created National security Division at the Department of Justice. Mr. Wainstein has excellent academic credentials and a lengthy background of public service, each of which makes him particularly well qualified for his position. He is a graduate of the University of Virginia and the law school of the University of California, Berkeley. Following law school, Mr. Wainstein clerked for Judge Thomas Penfield Jackson on the Federal district court in Washington, D.C.

From 1989 to 2001, he served as Assistant U.S. Attorney first in the Southern District of New York and later in the District of Columbia. In 2001, he became the Director of the Executive Office for U.S. Attorneys, which serves as a bridge between the U.S. Attorneys' offices around the country and the Department of Justice. From 2002 to 2004, he became very familiar with difficult criminal and terrorism issues through his service at the FBI first as general counsel, then as chief of staff. Mr. Wainstein currently serves as

U.S. Attorney for the District of Columbia, a position he has held since 2005.

He has a long and thorough resume that demonstrates his commitment to his country and the well-being of its citizens, and I am confident he will render excellent service as the first assistant attorney general for the National Security Division.

Mr. Wainstein, we are delighted to have you here. If you have family members you would like to introduce, you may do so at this time.

STATEMENT OF KENNETH L. WAINSTEIN, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, NATIONAL SECURITY DIVISION, DEPARTMENT OF JUSTICE

Mr. WAINSTEIN. Thank you very much, Mr. Chairman. Yes, I do. I would like to introduce my family, if I may. To my left is my wife, Elizabeth Wainstein.

Senator BROWNBACK. Welcome.

Mr. WAINSTEIN. And two of my three girls—do you want to stand up? Mackie is this one right here, and this is Ellie. And we have a third, Cicely, who is 13 months old, and she opted to stay home and take a nap.

Senator BROWNBACK. Opted to stay home.

Mr. WAINSTEIN. I also am very happy to have my parents here—my mother, Eleanor Wainstein, and my father, Leonard Wainstein.

Senator BROWNBACK. We are delighted to have you here.

Mr. Wainstein, we would be happy to receive any statement you would like to give.

Mr. WAINSTEIN. Thank you. I would like to give a very brief statement, if I may, Mr. Chairman. First, I would like to thank Senators Allen and Warner for their very kind statements they put in the record, and I also want to thank Congresswoman Norton for kindly appearing today and the kind words that she had, and also for her partnership with the U.S. Attorney's office in D.C. and law enforcement in the District.

I would also like to thank my family for their love and support and for being here with me today. I also want to thank a number of my colleagues and friends who are here in the hearing room, a number of whom are colleagues from the U.S. Attorney's office whom I have had the honor and pleasure to work with over the last two years, and prior to that as a line prosecutor. They represent a group of people who are truly wonderful public servants and who do great work on behalf of the residents of D.C.

I want to thank the President for the honor of nominating me for this position and the trust that he and the Attorney General have placed in me by nominating me for this job. And I can assure this Committee that if I receive this job, I will give it my full—give it everything I have and I will do everything I can to pursue the mission of protecting national security and defending civil liberties and the freedoms that we hold so dear.

With that, I would be very happy to take any questions.

[The biographical information of Mr. Wainstein follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).
Kenneth Leonard Wainstein
2. Address: List current place of residence and office address(es).
Residence: Alexandria, Virginia
Office: U.S. Attorney's Office
District of Columbia
555 4th Street, N.W.
Room 5806
Washington, D.C. 20530
3. Date and place of birth.
February 14, 1962
Palo Alto, California
4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).
Wife: Virginia Elizabeth Haynie Wainstein
Owner of Brockett's Row Antiques
277 South Washington Street
Alexandria, Virginia 22314
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
College: University of Virginia, 1980-1984
Bachelor of Arts, May 1984
Major: Government and International Relations
Law School: University of California, Berkeley
Boalt Hall School of Law, 1985-88
J.D., May 1988
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1984-85	Cleary, Gottlieb, Steen & Hamilton 1725 N Street, N.W. Washington, D.C. 20036 Paralegal
Summer 1986	Hunton & Williams 2000 Pennsylvania Avenue, N.W. Washington, D.C. 20036 Summer Associate
Summer 1987	Gibson, Dunn & Crutcher 200 Park Avenue New York, New York 10166 Summer Associate
	1050 Connecticut Avenue, N.W. Washington, D.C. 20036 Summer Associate
1988-89	Judge Thomas Penfield Jackson United States District Court 333 Constitution Avenue, N.W. Washington, D.C. 20001 Judicial Law Clerk
1989-92	United States Attorney's Office Southern District of New York 1 St. Andrew's Plaza New York, New York 10007 Assistant United States Attorney
1992-01	United States Attorney's Office District of Columbia 555 4 th Street, N.W. Washington, D.C. 20001 Assistant United States Attorney Deputy Chief of the Homicide Section (11/98-7/99) Deputy Chief of the Superior Court Division (7/99-11/00) Principal Assistant United States Attorney (11/00-4/01) Interim United States Attorney (4/01-8/01)

2001-02 Executive Office for United States Attorneys
 U.S. Department of Justice
 950 Pennsylvania Avenue, N.W.
 Washington, D.C. 20530
 Director

2002-04 Federal Bureau of Investigation
 935 Pennsylvania Avenue, N.W.
 Washington, D.C. 20535
 General Counsel (7/02-3/03)
 Chief of Staff (3/03-5/04)

2004-2005 United States Attorney's Office
 District of Columbia
 555 4th Street, N.W.
 Washington, D.C. 20530
 Interim United States Attorney (5/04-10/05)
 United States Attorney (10/05-present)
 Member, Attorney General's Advisory Committee (2004-2005)

7. Military Service: Have you had any military service: If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

College: Phi Beta Kappa
 Graduation with High Distinction

Law School: Note and Comment Editor, California Law Review
 Moot Court Board

Career: Director's Awards for Superior Performance, 1997 and 2000
 Bar Association of the District of Columbia Lawyer of the Year,
 2005

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

William B. Bryant American Inn of Court
Member 1993-2004

Edward Bennett Williams Inn of Court
Member 2004-Present

Bar Association of the District of Columbia
Member 2005-Present

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

- a. Hollin Hills Swim Club
- b. AUSA Association (This is an association of current and former AUSAs of the District of Columbia's U.S. Attorney's Office.)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

California State Bar: Admitted in 1988
Current status: Inactive

District of Columbia Bar: Admitted in 1996
Current status: Active

U.S. Court of Appeals, Second Circuit: Admitted in 1991
Current status: Active

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Law Review Article (copy attached):

Judicially Initiated Prosecution: A Means of Preventing Continuing Victimization in the Event of Prosecutorial Inaction, 76 CALIFORNIA LAW REVIEW 727 (1988).

Article in Law School Alumni Magazine (copy attached):

The USA PATRIOT Act: Enhances National Security While Respecting Civil Liberties, BOALT HALL TRANSCRIPT, Spring/Summer 2003.

Panelist Remarks at Federalist Society Convention, November 16, 2002 (transcript attached): The panel topic was "Whither Federalism? The Impact of Globalization and the War on Terror."

Testimony before the Subcommittee on the District of Columbia, Committee on Government Reform, U.S. House of Representatives, concerning Coordination of Criminal Justice Activities in the District of Columbia, May 11, 2001.

Statement before the Committee on the Judiciary, Council of the District of Columbia, on the "Innocent Protection Act of 2001," July 13, 2001.

Testimony before Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, U.S. House of Representatives, concerning The Foreign Intelligence Surveillance Act, Part II: (USA PATRIOT Act §§ 206 and 215), April 28, 2005.

Statement before the Committee on the Judiciary, Council of the District of Columbia, on the "Electronic Recording Procedures and Penalties Act of 2005," May 19, 2005.

Testimony before the Committee on the Judiciary, Council of the District of Columbia, on the "Omnibus Public Safety Act of 2005," May 31, 2005.

Statement submitted to the Committee on the Judiciary, Council of the District of Columbia, on the "Omnibus Public Safety Act of 2005," July 19, 2005.

NewsHour with Jim Lehrer, USA PATRIOT Act, June 16, 2005.

"Ask The White House" host, January 4, 2006.

Copies of press releases and press remarks are in binders accompanying this questionnaire.

Periodically, I speak with groups of lawyers, for the most part either prosecutors or practitioners in the District of Columbia. Such talks are extemporaneous and generally involve recent developments at the United States Attorney's Office, recent legislative or judicial decisions, or practice issues. A representative sample of such public appearances follows:

- National Youth Leadership Forum on Law, October 12, 2004.
- Brown bag lunch sponsored by the Young Lawyer's Group of the White Collar Section of the American Bar Association, December 9, 2004.

- Law Clerks' Speakers Program, U.S. Courthouse, July 20, 2005.
- Law Enforcement and Youth Partnerships for Crime Prevention Conference, October 7, 2005.
- Criminal Pretrial Practice Course, Georgetown Law School, March 17, 2006.

I also speak with civic associations and community groups about a variety of crime prevention topics related to public safety, as well as quality-of-life issues in the District of Columbia. I attend various community meetings on a monthly basis where these matters are discussed, and routinely entertain questions from the audience during and after the meetings. A representative sample of these appearances include:

- Monthly Patrol Service Area meetings.
- Monthly Advisory Neighborhood Commissioners' meetings.
- Resident and Tenant Associations meetings.

13. Health: What is the present state of your health? List the date of your last physical examination.

My health is excellent. My last physical examination was on March 15, 2006.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

April 2001	Appointed Interim United States Attorney for the District of Columbia by Attorney General John Ashcroft.
May 2004	Appointed Interim United States Attorney for the District of Columbia by Attorney General John Ashcroft.
October 2005	Following the President's June 2005 nomination, confirmed by the United States Senate to be United States Attorney for the District of Columbia.

15. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Yes.

1988-89 Judge Thomas Penfield Jackson
 United States District Court
 333 Constitution Avenue, N.W.
 Washington, D.C. 20001
 Judicial Law Clerk

2. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

3. the dates, names and address of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1989-92 United States Attorney's Office
 Southern District of New York
 1 St. Andrew's Plaza
 New York, NY 10007
 Assistant United States Attorney

1992-01 United States Attorney's Office
 District of Columbia
 555 4th Street, N.W.
 Washington, D.C. 20530
 Assistant United States Attorney
 Deputy Chief of the Homicide Section (11/98-7/99)
 Deputy Chief of the Superior Court Division (7/99-11/00)
 Principal Assistant United States Attorney (11/00-4/01)
 Interim United States Attorney (4/01-8/01)

2001-02 Executive Office for United States Attorneys
 U.S. Department of Justice
 950 Pennsylvania Avenue, N.W.
 Washington, D.C. 20530
 Director

2002-03 Federal Bureau of Investigation
 935 Pennsylvania Avenue, N.W.
 Washington, D.C. 20535
 General Counsel (7/02-3/03)
 Chief of Staff (3/03-5/04)

2004-Present United States Attorney's Office
 District of Columbia
 555 4th Street, N.W.
 Washington, D.C. 20530
 Interim United States Attorney (5/04-10/05)
 United States Attorney (10/05-present)

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I served as a federal prosecutor from 1989 until 2001, and again from May 2004 until the present. During those periods, I have been actively involved in litigation, either as a criminal prosecutor handling cases or as a supervisor overseeing a criminal and civil caseload. From August 2001 to July 2002, I served as Director of the Executive Office for United States Attorneys at the U.S. Department of Justice. From July 2002 to March 2003, I was General Counsel at the Federal Bureau of Investigation, and from March 2003 to May 2004, I was Chief of Staff to Robert S. Mueller, III, Director of the Federal Bureau of Investigation. Between August 2001 and May 2004, I played a supervisory role in litigation matters within my scope of authority, but I did not directly handle any litigation matters myself.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My only client has been the United States.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently as a federal prosecutor.

2. What percentage of these appearances was in:
 - (a) federal court
40%
 - (b) state courts of record;
60%
 - (c) other courts.
0%
3. What percentage of your litigation was:
 - (a) civil;
0%
 - (b) criminal.
100%
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately 25. I was sole counsel or chief counsel for every trial.
5. What percentage of these trials was:
 - (a) jury;
100%
 - (b) non-jury.
0%
16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or

parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Edward Williams
No. F-7449-03

On November 21, 2003, defendant Edward Williams went out for a night of drinking and ended up in a heated argument with two of his friends in an alley behind a nightclub. When his friends did not back down, Williams pulled out a handgun and fired six rounds into one friend -- who happened to have his own gun in his waistband -- and three into the other. He then jumped into his car, sped out of the alley and crashed into a pole two blocks away. When a police officer drove up on the scene, Williams fired two rounds at the cruiser, one of which struck the officer in the hand. Williams escaped, but was captured several days later.

A colleague and I took the case to trial in January 2005. We litigated a variety of pre-trial issues ranging from the defendant's ability to assert a self-defense to the admissibility of various contemporaneous statements made by victims and witnesses as the crime unfolded. We then presented a case that included DNA and ballistics evidence and gripping testimony from the victims and eyewitnesses. After two weeks of trial, the jury convicted the defendant on all counts. In April of 2005, Edward Williams was sentenced to 45 years of imprisonment.

- (a) the date of representation

January-February 2005
- (b) the name of the court and the name of the judge or judges before whom the case was litigated

Superior Court of the District of Columbia
Judge Hiram A. Puig-Lugo
- (c) the individual name, addresses, and telephone numbers of co-counsel and principal counsel for each of the parties

Co-Counsel: Gilberto Guerrero
Assistant United States Attorney
555 4th Street, N.W.
Washington, D.C. 20001
202-616-3225

Defense Counsel: Lexi Negin Christ
Hansen & Christ, P.C.
419 Seventh Street, N.W.
Suite 201
Washington, D.C. 20004
202-255-2193

2. United States v. Cooper
Criminal No. 99-0266 (JHG)

On July 6, 1997, Carl Cooper shot and killed three employees during a botched robbery of the Starbucks Coffee Shop in Georgetown. The cold-blooded nature of the crime and the ensuing investigation captured the public's attention. A joint Metropolitan Police/FBI task force and I conducted a grand jury investigation that employed a full array of investigative techniques, to include: the use of pen registers, Title III wiretaps, consensual undercover recordings, visual electronic surveillance and crime scene forensics; the prosecution and recruitment of Cooper's closest associates as cooperating defendants; and the methodical orchestration of the post-arrest interviews that elicited confessions from Cooper and his associates.

Cooper was arrested in March 1999, and the grand jury charged him in a 48-count RICO indictment with running a racketeering enterprise and with committing the Starbucks murders, six other robberies and the robbery/murder of a security guard. We also filed a Notice of Intent to Seek the Death Penalty if Cooper were convicted of the Starbucks murders. After lengthy pretrial litigation in which the court rejected Cooper's challenges to the death penalty and his evidentiary motions -- including a motion to suppress the confessions elicited during his 70 hours of post-arrest interviews -- Cooper pled guilty to all charges and was sentenced to life imprisonment without parole.

(a) the date of representation

August 1998 - April 2000

(b) the name of the court and the name of the judge or judges before whom the case was litigated

United States District Court for the District of Columbia
Judge Joyce Hens Green

- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the parties.

Defense Counsel: Stephen R. Kiersh, Esq.
717 D Street, N.W.
Suite 400
Washington, D.C. 20004
202-347-0200

Francis D. Carter, Esq.
1201 Connecticut Avenue, N.W.
Washington, D.C. 20036-2638
202-778-1800

3. United States v. Renaldo Mathis
No. F-3003-98

On December 4, 1997, Eric Butera was attacked and beaten to death in Southwest Washington, D.C., while working as a police informant in an undercover operation. At that time, Butera was attempting to gather information for the Starbucks murder investigation described above, and his killing touched off a controversy over the police handling of informants. I conducted the grand jury investigation and prosecuted the case against Renaldo Mathis to a murder conviction at trial.

- (a) the date of representation
1997 - 1999
- (b) the name of the court and the name of the judge or judges before whom the case was litigated
Superior Court of the District of Columbia
Judge Nan R. Shuker
- (c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the parties

Defense Counsel: Donald L. Dworsky
P.O. Box 409
Glen Echo, MD 20812-0409
301-229-1904

- (4) United States v. Vincent Hill, et al. ("K Street Crew")
Criminal No. 98-329 (TPJ)

In October 1996, while preparing to try a murder case against a gang leader named Jerome Martin, one of my main witnesses, a 21-year-old mother, was executed as she walked out of a party in Southwest Washington, D.C. Her death denied us a critical witness, and it caused the remaining witnesses to rethink their decision to testify for the government. The trial started four days later, and resulted in an acquittal.

At that point, another Assistant United States Attorney and I undertook a lengthy grand jury investigation that culminated in the indictment of two narcotics gangs, Jerome Martin's K Street Crew and the rival L Street Crew, that had terrorized Southwest Washington, D.C. throughout the early and mid-1990s. Working with the FBI Safe Streets Task Force, we conducted an investigation that involved the use of video and electronic surveillance, interviews with hundreds of grand jury witnesses, the prosecution and recruitment of several dozen cooperating defendants, and financial investigation into the defendants' money laundering. We ultimately charged 24 defendants with RICO and narcotics conspiracy and with committing a total of 24 murders and numerous shootings, robberies and kidnappings. I stepped aside after the superseding indictments were issued to focus on supervisory duties and the Starbucks investigation, and other AUSAs took the cases to trial. Jerome Martin and his confederates were found guilty of all major charges, including the murder of my witness, and they were sentenced to life in prison.

- (a) the date of representation
1996 - 1998
- (b) the name of the court and the name of the judge or judges before whom the case was litigated

United States District Court for the District of Columbia
Judge Thomas Penfield Jackson
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the parties.

Co-Counsel: James Dinan
Assistant U.S. Attorney
555 4th Street, N.W.
Washington, D.C. 20530
202-514-6154

Defense Counsel: Joseph Beshouri
419 Seventh Street, N.W.
Suite 201
Washington, D.C. 20004
202-842-0420

Christopher Davis
514 10th Street, N.W.
9th Floor
Washington, D.C. 22204
202-234-7300

Joanne Hepworth
601 Pennsylvania Avenue, N.W.
Suite 900
South Building
Washington, D.C. 20001
202-628-0293

(5) United States v. Ivery Gardner
No. F-1482-95

On February 15, 1995, Ivery Gardner was driving down Georgia Avenue, N.W., when he spotted a parked car occupied by three young men who had previously feuded with him over a drug debt. Gardner pulled over, walked up to the parked car, drew a handgun from his waist, and executed the three men in cold blood. The defendant fled the scene, but he was arrested later that night and ultimately indicted for the triple murder. At the three-week trial in November of 1997, I presented a solid government case based on forensics, eyewitness accounts and motive evidence relating to the feud. When the defendant testified on direct examination, however, he contended for the first time that the government's main witness had actually committed the triple murder, and he presented a seemingly plausible story to that effect. We were able to dismantle that defense, thanks to the defendant's equivocation and inconsistencies during cross-examination as well as some good police work that assembled a rebuttal case of testimony and motel records establishing that our main witness was in a motel in Maryland at the time of the murder. The defendant was convicted and is serving 66 years in prison.

- (a) the date of representation

1995 - 1997

- (b) the name of the court and the name of the judge or judges before whom the case was litigated

Superior Court of the District of Columbia
Judge Reggie B. Walton (now on the United States District Court for the District of Columbia)

- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the parties

Defense Counsel: Michelle A. Roberts
Akin, Gump, Strauss, Hauer & Feld, LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
202-887-4000

- (6) United States v. Chau Nguyen
No. F-10107-96

On November 2, 1996, the body of 13-year-old Hang Nguyen (no relation to defendant) was found in the bathtub of his apartment. He had been beaten, raped and strangled to death. After some initial fear and reticence, neighbors from his Vietnamese immigrant community came to my office and provided the assistance and information we needed to obtain an arrest warrant for a 25-year-old neighbor named Chau Nguyen. Chau Nguyen fled the city hours before detectives arrived at his apartment to arrest him, but we were able to subpoena his cellphone records and track his calls as he drove north on Route 95. The INS issued an alert, and Canadian officials stopped Chau Nguyen as he tried to cross the border near Buffalo, New York, on November 9, 1996. After a wide-ranging grand jury investigation, Chau Nguyen was indicted for the rape and murder of Hang Nguyen, as well as the sexual abuse of four other young boys in the same neighborhood. He pled guilty to first-degree murder and is serving a mandatory sentence of 30 years in prison.

- (a) the date of representation

1996 - 1998

- (b) the name of the court and the name of the judge or judges before whom the case was litigated

Superior Court of the District of Columbia
Judge Harold L. Cushenberry

- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the parties

Defense Counsel: Blaise Supler
New Mexico Public Defender Department
Aztec, New Mexico
(505) 334-1883, ext. 109

- (7) United States v. Harold Cunningham, Percy Barron and Billy Richardson
Criminal No. 95-88
167 F.3d 621 (D.C. Cir. 1999)

In 1993, I was assigned to investigate two homicides -- a double murder in a liquor store and an execution-style killing in a grocery store -- that had been committed with the same handgun. At the time, defendants Harold Cunningham and Percy Barron were charged with the grocery store shooting, and an individual named Michael Wright was charged with the liquor store murders. The grand jury investigation I conducted with the Safe Streets Task Force ultimately exonerated Mr. Wright, but it implicated Cunningham, Barron and a third man, Billy Richardson, in the liquor store murders as well as nine armed robberies and ten shootings. These crimes had left a total of five victims dead and thirteen wounded. Defendant Cunningham traded gunfire with the police on two of those occasions, the second of which resulted in his arrest and left him in a wheelchair with a bullet in his foot.

We charged the three men in a 68-count RICO indictment, and we presented over a hundred witnesses during the three-month trial in the Summer of 1996. The most dramatic moment of the trial came near the end of the government's case. As I was escorting Cunningham's girlfriend-turned-witness off the stand and shielding her from Cunningham, he pulled out a knife he had secreted in his wheelchair and lunged at us, inflicting a gash on the witness' chest and a small cut on my finger before he was subdued. The defendants then moved for a mistrial, arguing that the jurors would be prejudiced against them by their exposure to this violence. After two days of argument and a careful voir dire of the jury, the judge denied the defendants' motions and allowed the trial to proceed. The defendants were convicted and are serving life terms in prison. The use of the RICO statute against the robbery ring in that case was considered an expansive application of the law at that time, and its affirmance by the trial court and the D.C. Circuit Court of Appeals paved the way for using RICO in future such cases, including the Starbucks prosecution.

- (a) the date of representation

1993 - 1996

- (b) the name of the court and the name of the judge or judges before whom the case was litigated

United States District Court for the District of Columbia
Judge Gladys Kessler

- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the parties

Defense Counsel: Shawn Moore
702 H Street, N.W.
Washington, D.C. 20001
202-638-4798

Jonathan S. Zucker
601 Indiana Avenue, N.W.
Suite 910
Washington, D.C. 20004
202-624-0784

Greg Spencer
Office of the Federal Public Defender
625 Indiana Avenue, N.W.
Suite 550
Washington, D.C. 20004
202-208-7500

- (8) United States v. Starr
No. F-09906-93

The defendant, Keith Starr, decided to rob the decedent, who was a drug dealer in Southeast Washington, D.C. He and several friends put masks on their faces and broke into the decedent's apartment one night as the decedent was sleeping. The defendant confronted the decedent at gunpoint and demanded his money. When the decedent hesitated, the defendant shot and killed him. I handled the murder trial of the defendant. The main evidence in the case was the testimony of the decedent's girlfriend. Seconds before the gunshots, she heard the decedent call the shooter by the nickname "KeKe," which was the defendant's street name. The defendant was convicted at trial and is serving 30 years in prison.

- (a) the date of representation

1994

- (b) the name of the court and the name of the judge or judges before whom the case was litigated

Superior Court of the District of Columbia
Judge Colleen Kollar-Kotelly (now on the United States District Court for the District of Columbia)

- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the parties

Defense Counsel: Jonathan L. Stern
Arnold & Porter, LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206
202-942-5000

- (9) Everett v. United States
Nos. 91-CF-127, 91-CF-252, 92-CO-905, 92-CO-944

I briefed and argued the appeal of this murder conviction in which the defendant raised a variety of points on appeal, including challenges to the joinder of multiple offenses in the indictment, the admissibility of testimony about the line-up procedure in which witnesses had identified the defendant, the introduction of evidence of uncharged crimes allegedly committed by the defendant, and the appropriateness of the trial prosecutor's comments in summation to the jury. The District of Columbia Court of Appeals upheld the conviction in an unpublished opinion.

- (a) the date of representation

1992 - 1993

- (b) the name of the court and the name of the judge or judges before whom the case was litigated

District of Columbia Court of Appeals
Associate Judges John M. Steadman, Michael W. Farrell
and James A. Belson

- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the parties

Appellant's Counsel: Calvin Steinmetz
2141 P Street, N.W.
Suite 103
Washington, D.C. 20037
202-861-0077

(10) United States v. Weber
No. 90 CR 693

The FBI arrested defendant Ted Weber, a highway superintendent in a small town in the Catskills, after catching him in a kickback scheme with a highway supply company. The case was built on records from the town and the company, and on the testimony of the company employees who had previously entered cooperation agreements. I indicted the case in the Southern District of New York and handled the two-week trial in which the defendant was represented by William Kuntsler. The jury convicted Weber on all counts.

- (a) the date of representation

1990-91
- (b) the name of the court and the name of the judge or judges before whom the case was litigated
United States District Court for the Southern District of New York
Judge Vincent L. Broderick
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties

Defense Counsel: William Kunstler (deceased)

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

a. United States Attorney's Office (USAO)

I was appointed Interim United States Attorney for the District of Columbia in May 2004. On June 8, 2005, the President nominated me as United States Attorney, and I was confirmed by the United States Senate on October 7, 2005. As U.S. Attorney, I have the privilege of working with approximately 350 Assistant United States Attorneys and 350 support personnel in the office, the largest U.S. Attorney's Office in the country. Our staff has the job of

representing the government in civil and criminal cases in the United States District Court and the Court of Appeals for the D.C. Circuit and handling almost all adult criminal prosecutions and appeals in the courts of the District of Columbia.

This office historically has been one of the country's premier prosecution offices. Nonetheless, on the theory that things can always be improved, we have made a number of changes in our operations over the past two years. While every program and component in the office has seen some change, we have focused our efforts in three priority areas of prosecution: homicides, white-collar crimes and national security cases.

Homicides: This office owes our citizens no greater duty than to protect them from murderers, and we do so through the effective prosecution of homicide cases. I made it our first priority upon entering office to assess how we could improve our homicide prosecutions. Murder cases were then being handled in the Homicide/Major Crimes Section, a 52-prosecutor unit that prosecuted both fatal and non-fatal armed assaults and other serious violent crimes. I concluded that we could enhance our performance in homicide cases by establishing a separate Homicide Section -- one devoted exclusively to prosecuting murder cases -- and staffing it with the Superior Court Division's most experienced violent crime prosecutors.

We established this new section on October 4, 2004, and we have seen significant improvements in our homicide prosecution program since then. The Homicide Section supervisors have developed more consistent standards and expectations in homicide cases. They have greatly improved the working relationship between our homicide prosecutors and MPD's homicide detectives. Finally, with streamlined caseloads of exclusively homicides, our Homicide Section prosecutors now have the time and capacity to conduct the probing grand jury investigations and thorough trial preparation that are so critical to successful homicide prosecutions. As a result, we are producing stronger homicide cases that are more likely to result in conviction and secure lengthy prison sentences for those who kill our citizens.

White-Collar Crimes: We have steadily built up our fraud and public corruption practice by taking a number of steps, including: the recruitment and cultivation of strong white-collar prosecutors; the appointment of an impressive slate of supervisors who bring substantive and management experience in the field and an aggressive and energetic brand of leadership; the initiation of internal meetings every other morning in which the white-collar crime supervisors update the U.S. Attorney on progress in pending cases; and a program of outreach to the investigating agencies. The result is that we are generating white-collar cases of increasing significance, and we are investigating and prosecuting them at a faster pace.

A sampling of those cases (all of which have been disclosed publicly in press releases issued by the Department of Justice and/or the United States Attorney's Office) includes the following:

- Operation Digital Gridlock. On August 25, 2004, the FBI executed search warrants for one Internet service provider and for the residences of five individuals around the country who operated “hubs” on peer-to-peer networks by which copyright-protected materials were distributed and shared. All of the hub operators were charged and have pleaded guilty to felony charges of conspiracy to commit copyright infringement, the first federal convictions for copyright infringement using peer-to-peer networks.
- United States v. Riggs Bank. On January 26, 2005, Riggs Bank pleaded guilty to violating the Bank Secrecy Act by failing to monitor and report highly questionable transactions in the accounts of two of its largest customers, former Chilean dictator Augusto Pinochet and the Government of Equatorial Guinea, and the bank agreed to pay a \$16 million criminal fine, the largest criminal penalty ever imposed under that statute.
- United States v. Walter Anderson. On February 8, 2005, this office and the Tax Division announced the indictment of telecommunications entrepreneur and former billionaire Walter Anderson for using off-shore shell corporations to conceal his ownership in a number of telecom companies and his receipt of over \$450 million in capital gains. Between 1996 and 1999, his tax evasion resulted in over \$175 million of loss for the federal government and over \$43 million of loss for the D.C. Government. This is the largest personal criminal tax prosecution ever brought.
- United States v. Douglas Jemal, et al. On September 27, 2005, this office announced the indictment of Douglas Jemal, president of prominent D.C.-based Douglas Development Corporation, and two other executives for conspiring to bribe an official of the D.C. Office of Property Management in return for favorable treatment in relation to multi-million dollar contracts with and purchases from Douglas Development. The defendants are also charged with fraud and tax evasion.
- United States v. Mitchell Wade. On February 24, 2006, Mitchell Wade, the former owner of major defense contractor MZM, Inc., pleaded guilty to charges by our office that he made millions of dollars in illegal payoffs to former Congressman Duke Cunningham, supplied illegal benefits to Department of Defense officials who oversaw contracts with his company and made illegal campaign contributions to two members of Congress in an effort to obtain lucrative contracts for his company.

We also have established two significant new practice units in the Fraud and Public Corruption Section.

- The CHIP Unit. In October 2004, we became the 18th U.S. Attorney's Office to establish a Computer Hacking and Intellectual Property ("CHIP") Unit. Staffed with three prosecutors, this unit is building on our work in cases like Operation Digital Gridlock and on our strong relationship with the cyber investigators at the FBI and Secret Service to enhance our investigation and prosecution of Internet piracy, computer hacking and other cyber crimes.
- The Securities Team. We have established a modest-sized, yet very productive, securities team comprised of three AUSAs, including two who formerly worked at the SEC, that is steadily expanding our corporate fraud practice. This team is pursuing perjury/false statement prosecutions involving targets and witnesses who lie to SEC investigators as well as cases against a variety of securities fraudsters. Their impressive work on these cases and their collaborative relationship with the SEC are the foundation of a strong and growing practice.

National Security Cases: As the federal prosecutor for our Nation's Capital -- which has statutory jurisdiction for extraterritorial terrorism cases -- the D.C. U.S. Attorney's Office has a special responsibility to address the international threats to our country and our city. Over the past few years, our prosecutors have been steadily increasing the quantity and quality of work in our national security caseload. In August 2005, we decided to match that progress with a commensurate allocation of resources and organizational priority to our national security program. We created a National Security Section with 13 prosecutors who handle national security matters such as terrorism, terrorism hoaxes, export enforcement and espionage, as well as all investigations into leaks, mishandling or other disclosure of classified information and any other sensitive matters that implicate our national security or our interests overseas.

This new section, along with its additional personnel, is building our capacity to investigate and prosecute the national security matters that are a top priority of the Department, the Administration and the American people. It has promoted the continued development of our expertise in the diplomatic, intelligence and other specialized issues that arise in these cases. Finally, it has demonstrated our commitment to fulfilling our special statutory role as a primary venue for extraterritorial terrorism and other crimes that impact our country's security.

Our national security cases (all of which have been disclosed publicly in press releases issued by the Department of Justice and/or the United States Attorney's Office) include the following:

- United States v. Trinidad. Simon Trinidad, a high-ranking leader of the Colombian terrorist group, FARC, is charged by indictment with murder and the ongoing hostage taking that began on February 13, 2003, when FARC members shot down a small aircraft carrying four Americans and a Colombian military officer in the Colombian jungle, killed the Colombian officer and one American and took the rest as hostages.

- United States v. Delaema. Wesam Al Delaema, an Iraqi-born Dutch citizen, was indicted in 2005 on charges relating to his efforts to attack Americans in Iraq, the first U.S. criminal charges connected to terrorist activities in Iraq. Delaema traveled from the Netherlands to Iraq in October 2003 with a group of co-conspirators calling themselves the "Fighters of Fallujah." They declared their intentions to kill American personnel, and they planted explosive munitions and detonating cords in a road near Fallujah.
- United States v. Karake, et al. Three defendants are pending trial in this capital case for the murders of two Americans and several foreign nationals at the Bwindi Impenetrable National Park in Uganda. The defendants and fellow Rwandan rebels attacked the tourist camp at Bwindi, hacked and beat a number of tourists to death, and left notes on some victims' bodies indicating that the crimes were politically motivated.
- United States v. Kahn. Humayun Kahn is charged with conspiring to export triggered spark gaps from the United States to Pakistan without a license. A triggered spark gap can be used to trigger nuclear reactions in explosive devices. Kahn's indictment is based largely upon the testimony of Asher Karni, an Israeli businessman who conspired with Kahn and has pleaded guilty and cooperated in this ongoing nuclear proliferation investigation.

As the foregoing demonstrates, this office has made significant progress in a number of areas over the past two years. It is important, however, that we give credit where credit is due. That progress was possible only because my predecessors and their staffs had laid the groundwork with their hard work and vision. Moreover, while management played some part in this effort, the line personnel -- attorney and support staff -- are responsible for the lion's share of the work and dedication that produced these results. They are to be commended for their exceptional and largely unheralded service to this office and the city.

b. Federal Bureau of Investigation

While Chief of Staff with the Federal Bureau of Investigation (FBI), I advised the Director on the myriad issues that arose each day, and I helped to translate the Director's plans and decisions into action. My responsibilities included the following: I attended the Director's internal meetings and the daily terrorism threat briefings with the Attorney General and representatives from Main Justice and the CIA; I chaired daily coordination meetings with the heads of the Offices of Congressional Affairs and Public Affairs, the Finance Division and the Office of the General Counsel; I oversaw the operations of the Front Office, which included the Director's scheduling and coordination of the Director's public statements and appearances; I coordinated operational and policy decisions with counterparts at Main Justice, the United States Attorneys' Offices, the NSC, the CIA and other agencies; and I represented the FBI in discussions with the Department of Justice about legislative, regulatory and policy proposals

regarding the FBI's investigative capabilities.

As General Counsel for the FBI, I advised the Director and the executive staff on legal and policy matters, and I managed the approximately 200 employees in the Office of the General Counsel. The Office of General Counsel provides a variety of legal services for the Bureau, to include: advising agents on legal issues that arise in the course of criminal and intelligence investigations; giving legal support to the foreign counterintelligence program and the FISA process; representing the FBI in civil litigation; providing legal training to FBI agents; managing legal issues arising from the investigative use of technology; and giving advice on administrative law and ethical matters.

c. Executive Office for United States Attorneys (EOUSA)

As Director of the Executive Office for United States Attorneys, I worked closely with the United States Attorneys' Offices (USAOs) and coordinated operations, policy and other matters between the USAOs and Main Justice. The coordination function was particularly critical in regard to the Department of Justice's nationwide response to the 9/11 terrorism attacks and the division of responsibility for the major corporate fraud cases. I also managed the approximately 300 EOUSA employees and supervised their myriad operations. EOUSA's operational responsibilities include running the Office of Legal Education and the National Advocacy Center in Columbia, South Carolina; managing the formulation and execution of the approximately 1.3 billion dollar budget for the USAOs; providing legal and ethics advice to USAO employees; conducting regular performance evaluations of each USAO; providing personnel, information technology, communications and management support for the USAOs; and handling legislative matters relating to the USAOs.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.
 - a. I participate in the Thrift Savings Plan, and my current balance is approximately \$205,000.
 - b. Income from gravel, timber and hunting leases from wife's interest in family farm in Alabama.
2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

In the event of a potential conflict of interest, I will immediately consult with the Department of Justice Ethics Office.
3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.
4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Financial Disclosure Report is attached.
5. Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached net worth statement.
6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a public servant, much of my daily work serves the disadvantaged members of society. As a federal prosecutor, I have devoted my career to serving the public, and victims of crime in particular. A large percentage of my time as a line prosecutor has been spent helping victims and witnesses navigate the criminal justice system and deal with the aftermath of violent crime. As United States Attorney, I have worked in partnership with community-based organizations and faith-based institutions to prevent at-risk youth and young adults from becoming involved in the criminal justice system. In addition to participating personally in these programs, I encourage my staff to participate in these programs. I also have devoted substantial resources from my office to support the goals and objectives of these programs. A representative sample of these initiatives include the following:

- District of Columbia Weed and Seed Steering Committee
- U.S. Attorney's Office Community Prosecution and Outreach Program
- Project Safe Neighborhoods
- No Murders DC
- Stanton Elementary School Parents Empowerment Program
- Project LEAD (Legal Enrichment and Decision Making)
- Latino Gang Intervention Partnership
- Violence Intervention Partnership
- National Night Out

On the weekends, I coach little league soccer and baseball teams. I just recently volunteered to be a mentor for the Stanton Elementary Mentoring Program in Southeast Washington, D.C.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of memberships. What you have done to try to change these policies.

No.



U.S. Department of Justice

Washington, D.C. 20530

MAR 14 2003

Ms. Marilyn L. Glynn
General Counsel
Office of Government Ethics
1201 New York Avenue, NW
Suite 500
Washington, DC 20005-3919

Dear Ms. Glynn:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Kenneth L. Wainstein, who has been nominated by the President to serve as Assistant Attorney General, National Security Division, Department of Justice.

We have conducted a thorough review of the enclosed report. The conflict of interest statute, 18 U.S.C. 208, requires that Mr. Wainstein recuse himself from participating personally and substantially in a particular matter that has a direct and predictable effect on his financial interests or the financial interests of any other person whose interests are imputed to him, unless he first obtains a written waiver, pursuant to Section 208(b)(1), or qualifies for a regulatory exemption, pursuant to Section 208 (b)(2). Mr. Wainstein understands that the interests of the following persons are imputed to him: his spouse; minor children; any general partner; any organization in which he serves as an officer, director, trustee, general partner or employee; and any person or organization with which he is negotiating or has an arrangement concerning prospective employment. In determining whether a particular matter has a direct and predictable effect on his financial interests or on those of any other person whose interests are imputed to him, Mr. Wainstein will consult with Department of Justice ethics officials.

We have advised Mr. Wainstein that because of the standard of conduct on impartiality at 5 CFR 2635.502, he should seek advice before participating in a particular matter involving specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party. He will not participate in any particular matter with specific parties in which someone with whom he has a covered relationship is or represents a party, unless he is authorized to participate.

Ms. Marilyn L. Glynn

Page 2

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Allen". The signature is fluid and cursive, with the first name "Michael" and last name "Allen" clearly distinguishable.

Michael Allen
Deputy Assistant Attorney General
for Administration and
Alternate Designated Agency Ethics Official

Enclosure

Direct Appointment, Candidacy, Election, or Nomination (Month, Day, Year)		Reporting Status (Check Appropriate)	Incumbent <input type="checkbox"/>	Calendar Year Covered by Report	New Entrant Nominee, or Candidate <input checked="" type="checkbox"/>	Termination Date (If Applicable) Date (Month, Day, Year)	Termination Date (Month, Day, Year)	Fee for Late Filing Any individual who is required to file this report and who fails to do so after the date the report is required to be filed or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 fee.
Reporting Individual's Name		First Name and Middle Initial WAINSTEIN						
Position for Which Filing		Title of Position Kenneth L.						
Location of Present Office (or forwarding address)		Address (Number, Street, City, State, and ZIP Code) U.S. Department of Justice 655 4th Street, N.W. Washington, D.C. 20001						
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)		Title of Position(s) and Date(s) Held United States Attorney (5/28/04-Present)						
Presidential Nominees Subject to Senate Confirmation		Name of Congressional Committee Considering Nomination Do You Intend to Create a Qualified Diversified Trust? Committee on Judiciary <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No						
Certification I CERTIFY that the statements I have made are true and correct and that the schedules are true and correct to the best of my knowledge.		Signature of Reporting Individual Kenneth L. Wainstein Date (Month, Day, Year) 3/6/06						
Other Review (If Applicable) Signature of Other Reviewer		Signature of Other Reviewer Lain M. T. ... Date (Month, Day, Year) 3/6/06						
Agency Ethics Official's Opinion On the basis of information contained in this report, the Agency Ethics Official has reviewed the report and finds that the report is in compliance with applicable law and regulations (subject to any comments in the box below).		Signature of Designated Agency Ethics Official/Reviewing Official W. ... Date (Month, Day, Year) 3/7/06						
Office of Government Ethics Use Only		Signature						
Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet) (Check box if filing extension granted & indicate number of days) <input type="checkbox"/>								

SE 276 (Rev. 03/2009)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name
WANSTEIN, Kenneth L.

SCHEDULE A

Page Number
2 of 10

Assets and Income	BLOCK B Valuation of Assets at close of reporting period										BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.												
	BLOCK B										Type	BLOCK C											
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000		None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	Over \$5,000,000	Other Income (Specify Type and Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples																							
Central Airlines Common																							
Doe Jones & Smith, Hometown, State																							
Kempstone Equity Fund																							
IBM International 500 Index Fund																							
1 Pentagon Fed. CU (MM savings, checking, and DC's savings)																							
2 Alexandria, VA																							
3 Merchants Trust, Inc. Stock																							
4 Family land, 12% int. in mother's share (several plots) Clarke County, Alabama																							
5 Alexandria Appraisal Group, Alexandria, VA (antiques and appraisals)																							
* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.																							
Prior Editions Cannot Be Used.																							
*Timber lease receipts \$3,458.74; Gravel lease receipts \$728.37; Hunting lease receipts \$1,436.02																							

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name
WAINSTEIN, Kenneth L.

SCHEDULE A continued
(Use only if needed)

Page Number
4 of 10

Assets and Income	BLOCK B Valuation of Assets at close of reporting period												BLOCK C Income: Type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.																			
	BLOCK B												BLOCK C																			
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	Over \$1,000,000 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) (Only if Honoraria)
1 --CHUBB Corp. Common Stock																																
2 --Coca Cola Co. Common Stock																																
3 --Walt Disney Common Stock																																
4 --Intel Corp. Common Stock																																
5 --Johnson & Johnson Common Stock																																
6 --Medco Common Stock																																
7 --Merck Common Stock																																
8 --Office Depot Inc. Common Stock																																
9 --Pfizer Inc. Common Stock																																

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name
WAINSTEIN, Kenneth L.

SCHEDULE A continued
(Use only if needed)

Page Number
5 of 10

Assets and Income	BLOCK B Valuation of Assets at close of reporting period												BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.					Date (Mo., Day, Yr.) Only if Honorary												
													Type	Amount																
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	Excepted Investment Fund	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	Over \$5,000,000	Other Income (Specify Type & Actual Amount)		
1 --Verizon Communications Common Stock	x																		x											
2 --Wachovia Corp. Common Stock				x															x											
3 --Evergreen Short Int. Bond Fund I					x								x						x											
4 --Evergreen Core Bond Fund I													x						x											
5 Generation Shipping Trust 2																														
6 --Fed. Inv. Alabama Muni. Cash Trust																														
--Aetna Common Stock																														
7 --CHUBB Corp. Common Stock																														
8 --Coca Cola Co. Common Stock																														
9 --Walt Disney Co. Common Stock																														

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Price Editions Cannot Be Used.

032/Asset Aetna version 1.0 (1/24/01)

SP-278 (Rev. 03/2000)
U.S. Office of Government Ethics

SCHEDULE A continued
(Use only if needed)

Page Number
6 of 10

Assets and Income		BLOCK B Valuation of Assets at close of reporting period												BLOCK C Income												Date (Mo., Day, Yr.)	
		BLOCK B Valuation of Assets at close of reporting period												BLOCK C Income												Date (Mo., Day, Yr.)	
1	--First Data Corp. Common Stock	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	None (or less than \$201)	\$201 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	Over \$5,000,000	Other Income (Specify Type & Amount)				
2	--Intel Corp. Common Stock																										
3	--Johnson & Johnson Common Stock																										
4	--Medco Common Stock																										
5	--Merck & Co. Inc. Common Stock																										
6	--Office Depot Inc. Common Stock																										
7	--Pfizer Inc. Common Stock																										
8	--Procter & Gamble Common Stock																										
9																											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (Rev. 13/2000)
5 C.F.R. Part 263.4
U.S. Office of Government Ethics

Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name
WAINSTEIN, Kenneth L.

Page Number
8 of 10

Part I: Transactions

Do not report a transaction involving property used solely as your residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

Transaction Type (X)

None ☐

Date (Mo., Day, Yr.)

2/1/99

Purchase

Exchange

Sale

Amount of Transaction (X)

Over \$1,000,000

\$1,000,000 - \$1,000,000

\$500,000 - \$1,000,000

\$100,000 - \$500,000

\$15,000 - \$100,000

\$1,000 - \$15,000

Identification of Assets

Example Central Airlines Common

1

2

3

4

5

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as food, or entertainment) received from one source totaling more than \$260; and (2) travel-related cash reimbursements received from one source totaling more than \$260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. Exclude anything given to you by the U.S. Government given to your agency in connection with official travel; fees from activities received by your spouse or dependent child totally independent of the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth \$104 or less. See instructions for other exclusions.

Source (Name and Address)

Brief Description

Value

1

2

3

4

5

Prior Editions Cannot Be Used.

OGE/Asst. Admin. version 12.1 (3/95/01)

SE 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name
WAINSTEIN, Kenneth L.

SCHEDULE D

Page Number
10 of 10

Part I: Positions Held Outside U.S. Government
Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, officer, partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature. ☒ None

Examples	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
1	North Assn. of Book Publishers One Jones & Smith, Hometown, State	Non-profit educational Law firm	President Partner	6/92	Present
2				7/85	1/00
3					
4					
5					
6					

Part II: Compensation in Excess of \$5,000 Paid by One Source
Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate. ☒ None

Examples	Source (Name and Address)	Brief Description of Duties
1	One Jones & Smith, Hometown, State Metro University (clients of One Jones & Smith), Hometown, State	Legal services Legal services in connection with university construction
2		
3		
4		
5		
6		

Prior Editions Cannot Be Used

OGGE Admin. Amdt. version 1.01 (12/2001)

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	45	616	00	Notes payable to banks-secured			
U.S. Government securities-add schedule	none			Notes payable to banks-unsecured			
Listed securities-add schedule	none			Notes payable to relatives			
Unlisted securities--add schedule	180	000	00	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others	9	000	00	Other unpaid tax and interest			
Doubtful				Real estate mortgages payable-add schedule	632	084	00
Real estate owned-add schedule	1,855	500	00	Chattel mortgages and other liens payable			
House/Farm/Timberland				Other debts-itemize:			
Real estate mortgages receivable							
Autos and other personal property	160	367	00				
Antiques and cars							
Cash value-life insurance							
Other assets itemize:							
1. TSP	205	000	00				
2. Generation Skipping Trust	888	185	00				
3. Wife's IRA	29	311	00				
4. and e. Children's Trusts	38	551	00				
5. Equity in Wife's Business	350	000	00	Total liabilities	632	084	00
				Net Worth	3,129	446	00
Total Assets	3,761	530	00	Total liabilities and net worth	3,761	530	00
CONTINGENT LIABILITIES				GENERAL INFORMATION			
Is endorser, comaker or guarantor	No			Are any assets pledged? (Add schedule)	No		

On leases or contracts	No			Are you a defendant in any suits or legal actions?	Yes		
Legal Claims	No			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT ADDENDUM

NET WORTH

ASSETS

- | | | |
|-----|------------------------------------|--|
| 1. | Cash on hand and in banks | \$10,191 (family accounts)
\$35,425 (wife's business account) |
| 2. | U.S. Government Securities | None |
| 3. | Listed securities | None |
| 4. | Unlisted securities - add schedule | Wife's Merchant Bank stock - value is approximately \$180,000. |
| 5. | Accounts and notes receivable: | |
| | Due from relatives and friends | None |
| | Due from others | \$9,000 (net due in wife's business) |
| | Doubtful | None |
| 6. | Real estate owned-add schedule | Residence in Alexandria, Virginia.
2006 assessed value is \$1,422,500.

Wife owns 12% of a family farm in Clarke County, Alabama. Value is approximately \$433,000. |
| 7. | Real estate mortgages receivable | None |
| 8. | Autos and other personal property | 1994 Ford Explorer - assessed value is \$2,650
2001 Acura MDX - assessed value is \$22,100
2006 Acura - purchased 11/05 for \$35,617
Antiques - approximately \$100,000 |
| 9. | Cash value-life insurance | None |
| 10. | Other assets itemize: | |
| | a. Federal Thrift Savings Plan. | The approximate value of my account is \$205,000. |

- b. My wife is a future beneficiary of two generation-skipping trusts set up by her grandparents for their descendants. She will receive her share of the trust income only upon the death of her mother and aunt. The approximate current value of one trust is \$333,967. The approximate current value of the other trust is \$424,218. The trusts also own timberland in Clarke County, Alabama with an approximate value of \$130,000. See attached schedule.
- c. Wife's IRA:
 - ◆Taiwan Fund Inc.
(current value: \$4,794)
 - ◆UNTS Dividend Income Val Strategy 2004-G Ser (Trad Equity Opportunity Trust)
(current value: \$3,190)
 - ◆Wachovia Bank
(current value: \$21,327)
- d. Daughter (Virginia Annie McLean) Morgan Keegan Fund:
 - ◆GNMA
 - ◆FHLMC
 - ◆Cash
(current value: \$10,064 of which \$9,746 is in government securities)
- e. Daughter (Elizabeth Eleanor) Morgan Keegan Fund:
 - ◆FNMA
 - ◆FHLMC
 - ◆GNMA
 - ◆Lehman Brothers Certificate of Deposit
 - ◆Carolina First Bank Certificate of Deposit
 - ◆Cash
(current value: \$28,487 of which \$20,707 is in government securities)
- f. Wife is owner of an antique shop with an approximate equity of \$350,000.

TOTAL ASSETS \$3,761,530

CONTINGENT LIABILITIES

- 1. As endorser, comaker or guarantor None
- 2. On leases or contracts None

301

3.	Legal Claims	None
4.	Provision for Federal Income Tax	None
5.	Other special debt	None

LIABILITIES

1.	Notes payable to banks-secured	None
2.	Notes payable to banks-unsecured	None
3.	Notes payable to relatives	None
4.	Notes payable to others	None
5.	Accounts and bills due	None
6.	Unpaid income tax	None
7.	Other unpaid tax and interest	None
8.	Real estate mortgages payable-add schedule	Mortgage on residence in Alexandria, VA. Principal balance is \$629,084 (Countrywide Home Loans, Simi Valley, CA). Line of credit secured by residence in Alexandria, VA. Balance is \$3,000 (Wachovia Bank, Mobile, AL).
9.	Chattel mortgages and other liens payable-add schedule	None
10.	Other debts-itemize:	None

TOTAL LIABILITIES \$757,637

NET WORTH \$3,003,893

TOTAL LIABILITIES AND NET WORTH \$3,761,530

GENERAL INFORMATION

- | | | |
|----|--|-------------------------------|
| 1. | Are any assets pledged? (add schedule.) | No. |
| 2. | Are you a defendant in any suits or legal actions? | Yes, in my official capacity. |
| 3. | Have you ever taken bankruptcy? | No. |

LISTED SECURITIES IN TWO GENERATION SKIPPING TRUSTS**Mutual Funds**

Evergreen Core Bond Fund
 Evergreen Short-Intermediate Bond Fund
 William Blaire International
 Templeton Institutional FDS Inc.

Common Stocks

Aetna Inc.
 Chubb Corp.
 Coca Cola Co.
 Walt Disney Company Holding Company
 First Data Corp.
 Intel Corp.
 Johnson & Johnson
 Medco Health Solutions Inc.
 Merck & Co. Inc.
 Office Depot, Inc.
 Pfizer Inc.
 Procter & Gamble Co.
 J.M. Smucker Co.
 UST Inc.
 Verizon Communications
 Wachovia Corp.

Federated Alabama Musical Cash Trust

TOTAL VALUE: \$758,185



U.S. Department of Justice

Kenneth L. Wainstein
United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

August 1, 2006

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Supplement to Senate Judiciary Questionnaire

Dear Senators Specter and Leahy:

This letter supplements my response to Question 12 of the Senate Judiciary Questionnaire provided to the Committee in connection with my nomination to be Assistant Attorney General for the National Security Division of the U.S. Department of Justice with regard to my speaking engagements.

Over the past few weeks, I have participated in the following:

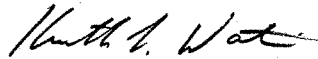
1. Panel Member, "Federal Sentencing Post-Booker: Are the Guidelines In Fact Advisory," D.C. Circuit Judicial Conference, June 9, 2006.
2. Participant, Federal Legal Advisor Training Conference, June 15, 2006.

The Honorable Arlen Specter
The Honorable Patrick Leahy
Re: Supplement to Senate Judiciary Questionnaire
August 1, 2006
Page 2

3. Interview, Fox News, June 23, 2006.
4. Guest Speaker, National Student Leadership Conference,
American University, June 28, 2006.
5. New Violent Crime Task Force Press Conference,
July 21, 2006.

There were no prepared remarks for Item Nos. 1, 2, 3 and 4. A copy of the prepared remarks for Item No. 5 is enclosed.

Sincerely,



Kenneth L. Wainstein
United States Attorney

Enclosure



U.S. Department of Justice

Kenneth L. Wainstein
United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

New Violent Crime Task Force Press Conference

**Ken Wainstein
United States Attorney**

Friday, July 21, 2006

Good afternoon and thank you for coming.

My name is Ken Wainstein. I'm the U.S. Attorney here in D.C. I'm honored to be here today -- to voice the strong commitment of this Office, the Department of Justice and of the Attorney General and Deputy Attorney General to the law enforcement effort in the District of Columbia and to join with this fine group of public servants to talk about our coordinated response to this summer's crime emergency.

As you know, last week, Chief Ramsey declared a crime emergency in response to the recent increase in violent crime in our city, and he called upon all partners in the law

enforcement community to join forces with MPD in the effort to suppress that criminal activity.

Today, we are here to say that law enforcement has answered that call, and we're here to announce that we have established a Violent Crime Task Force that will target armed robbers and the other violent criminals who see summertime in the District of Columbia as an opportunity to prey on the innocent and the vulnerable.

We have with us today a group of officials who represent various contributions to that effort. These are officials from all levels of government who play an important role in law enforcement in our Nation's Capitol.

Starting with Capitol Hill, we have two of our closest friends in Congress:

- We have Congressman Frank Wolf of Virginia, who has worked long and hard to encourage and energize federal efforts on behalf of the District; who has tirelessly supported law enforcement here and throughout our country; and has provided**

invaluable guidance and suggestions as we have navigated through the rough patch during this crime emergency this summer.

- **We have our Congresswoman, Eleanor Holmes Norton, who has been long been a strong and vocal advocate for a prominent federal role in law enforcement in the District.**
- **In fact, Congresswoman Norton has just come from a hearing in which they were meeting with federal law enforcement agency heads and discussing the very issue of the federal contribution to public safety in D.C.**

We have our Mayor – Mayor Anthony Williams – who has provided strong and sustained leadership in the area of law enforcement and has responded decisively to this crime emergency with bold action and with the proposal of innovative legislation to prevent and deter crime.

We have our Police Chief, Charles Ramsey of the Metropolitan Police Department, who has served as the field

commander of this combined D.C./federal law enforcement effort -- sounding the alarm bells about the rising robbery rate and working hard to mobilize all available manpower to attack the problem.

We have a number of other agency heads who are contributing to the effort in a variety of ways, including:

- Paul Quander, Director of CSOSA
- Bob Spagnoletti, Attorney General of DC, and
- Susie Shaffer, Director of Pretrial Services Agency

We have Mike Mines, Special Agent in Charge in the Washington Field Office of the FBI. He and his FBI colleagues have teamed up with MPD to establish and to house the Violent Crime Task Force that will be the main vehicle for attacking this crime problem.

In addition, we have representatives of all the federal agencies who will participate in this task force:

- U.S. Park Police, represented by Deputy Chief David Stover
- U.S. Secret Service, represented by Special Agent

in Charge Jim Burch

- **Metro Transit Police, represented by Chief Polly Hansen**
- **U.S. Capitol Police, represented by Chief Christopher McGaffin**
- **The D.C. National Guard, represented by Major General David Wherley**
- **Bureau of Alcohol, Tobacco, Firearms & Explosives, represented by Assistant Special Agent in Charge Willie Brownlee**
- **Drug Enforcement Administration, represented by Special Agent in Charge Shawn Johnson**
- **U.S. Marshals Service, represented by Supervisory Inspector Matt Burke; and lastly the**
- **U.S. Attorney's Office, represented by yours truly.**

This coalition standing before you today showcases the coordination that is so vital to public safety here in the District. If there's one thing we've learned over the years here in D.C. -- it's that no single law enforcement agency can

go it alone. No one of us has the silver bullet that can reduce crime. But together, we do have the silver bullet -- and that silver bullet is teamwork. It has been teamwork among all the agencies that has succeeded in reducing crime in D.C. so dramatically over this past decade, and it's teamwork that will stamp out this flare-up of crime we're seeing this summer.

That teamwork is on clear display here today. Every agency is making a significant contribution with its own resources and in its own way:

- Some agencies are deploying their personnel in ways that will free up MPD officers so that they can focus on street patrol and violent crime investigations;**
- Some are contributing manpower and effort to the Violent Crime Task Force that we are announcing today;**
- And many of us are working to prevent these crimes from happening in the first place, through**

intervention programs that target our at-risk population. As an example, most of the folks you see up here today regularly participate in a program in which we meet every few months at the federal courthouse for an outreach session -- where we speak with several dozen parolees and probationers, folks who are involved -- or are at risk of being involved -- with gangs and a gang lifestyle that will lead them to the prison cell or to an early grave. We're there just to talk with them -- to let them know that they have a choice to make; to explain the criminal justice consequences they'll face if they make the wrong choice; and to offer them a helping hand if they want to make the right choice.

- Finally, all the agencies you see here today will be participating in a Violent Crime Summit in approximately 60 days from now. At that summit - - which was proposed by Congressman Wolf --

we'll evaluate our response to this crime emergency as well as the effectiveness of our ongoing crime-fighting programs. And, we'll do that with an eye to refining our inter-agency coordination and developing our strategy for going forward.

So, as you can see, this is a comprehensive effort, and it typifies the sort of coordination that is the trademark of law enforcement in D.C. My colleagues at the U.S. Attorney's Office are proud to be a part of this team; we count ourselves blessed to have law enforcement partners who are so committed to their mission; and we are confident that -- together -- we can suppress this current spike in crime and continue the downward trend in the crime rate that has improved life in our District so significantly over the past decade.

I'll now turn the microphone over to our other speakers to provide specifics on our response to the crime emergency. And, we'll start with our mayor, Mayor Anthony Williams.



U.S. Department of Justice

Kenneth L. Wainstein
United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

August 16, 2006

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

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Over the past few weeks, I have participated in the following:

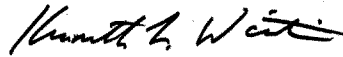
1. National Night Out, August 1, 2006.
2. Panel Member, *Stop the Madness*, Best Friends Foundation, August 11, 2006.

The Honorable Arlen Specter
The Honorable Patrick Leahy
Re: Supplement to Senate Judiciary Questionnaire
August 16, 2006
Page 2

3. Mall Robberies Press Conference, August 11, 2006.

There were no prepared remarks for Item Nos. 1 and 2. A copy of the prepared remarks for Item No. 3 is enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth L. Wainstein".

Kenneth L. Wainstein
United States Attorney

Enclosure

MALL ROBBERIES PRESS CONFERENCE REMARKS

About four weeks ago, Chief Ramsey declared a crime emergency in the District of Columbia and he cited the fact that there had been a spike recently in violent crimes, and particularly in street robberies – where stick-up men pounce on innocent folks as they're going about their daily lives. There have been hundreds of such robberies in D.C. over the past few months, and they have all been terrible crimes that traumatized their victims.

But, five of those robberies in particular stood out and really caught people's attention. Those five stood out because they took place here -- on our National Mall,

within yards of where we're standing today.

The National Mall is a very special place. In many ways, it's the physical and the symbolic center of our government. From the Capitol Building at the eastern end to the Lincoln Memorial in the west, it's a place that has great meaning for our country -- a place that represents our government under the law and stands for the idea that every American deserves the full protection of the law.

For generations, American and foreign visitors have toured these grounds without concern at all hours of day and night, admiring the monuments and the principles that they represent.

But that all changed in May of this year when the robberies started to take place. Tourists who had once

walked in admiration of our monuments now walked in fear -- in fear of the dangers that lurked in their shadows. Virtually overnight, this place of public pride became a place of public danger.

Over the course of three evenings, in May and July, five young men targeted our National Mall as a hunting ground for robbery victims. On each of these evenings, these men did pretty much the same thing: They left their homes; took the Metro to the Mall; sought out the darkest areas along the walkways on the Mall; and then just lay in wait. And when unsuspecting tourists walked by, they pounced on them, stuck a gun in their faces and took their money and valuables.

And, they didn't stop with just robbing the victims; they physically brutalized a number of them as well.

- they kicked one young man in the head and then gratuitously kicked a young woman in the head as she was lying helpless and pinned to the ground;
- they groped and fondled two of their female victims;
- and they sexually molested a third young woman, when two of the defendants dragged her into the shadows outside the Smithsonian Castle and brutally raped her at gunpoint.

These defendants committed a total of five robberies -- doing so in twos and threes and in different combinations each night -- and they victimized a total of 12 different victims, including men, women and even a little boy as young as 9 years old.

We in law enforcement couldn't abide these violations on our National Mall, and we committed ourselves to stopping them. We set up an investigative team to work the case, and that team conducted what was an absolutely textbook example of a criminal investigation -- a seamless coordination of investigators, prosecutors and evidence experts working as a team with the single goal to identify the perpetrators and to build the criminal cases that will put them behind bars.

And today, we're here to announce that we have now achieved that goal. Over the past two weeks we have arrested, charged and incarcerated each and every one of the young men who committed these offenses. And we have also secured a conviction against one of them.

- **On July 28th, we arrested defendants Zachary**

Bright and Ryan Newman and charged them with the robberies on July 11th.

- **On August 4th, we arrested defendant Michael Bright and charged him with the May 27th robbery.**
- **On Monday August 8th, we arrested defendant Marcus Brown and charged him with the robberies on May 25th.**
- **And also on Monday, we took a guilty plea from defendant Trayvon Thomas, in which he admitted robbing two couples on May 25th as well as robbing the couple on the 27th when he and his accomplices brutally raped the 17 year-old woman at gunpoint.**

This has been a tremendous effort with tremendous

results, and every agency represented here today made an important contribution.

- **The Park Police took the point in the investigation, running down the majority of the leads that led to the arrests.**
- **The U.S. Attorney's Office coordinated the investigation and developed the prosecutions.**
- **The Secret Service analyzed the cellphone records, which allowed us to identify these robbers when they used the cellphones they had stolen from their victims.**
- **The Marshals Service, the Metropolitan Police Department, the Metro Transit Police and the FBI all contributed a lot to the investigation -- assisting in the defendants' arrests as well as the**

**execution of the 18 different search warrants
that we executed in the course of this
investigation.**

**My hat's off to these folks for doing such a great job.
They operated as a model of inter-agency teamwork, and
that's just the model we're using throughout the District
as we all work to stem the tide of armed robberies and to
protect the residents and visitors in our city.**

Senator BROWNBACk. Thank you, and thank you for your great service, and I want to thank your family. You have impressive resume and an impressive work you have done so far, and this is a key position.

On the FISA court and the FISA issue, what are you willing to say at this point in time about what we should be doing of our National intelligence being reviewed by the FISA court?

Mr. WAINSTEIN. Of our National intelligence being reviewed by the FISA court?

Senator BROWNBACk. Yes. As you know, we have got a big debate about some of the intelligence-gathering information that we are getting and the process by which we are getting it. A number of people are saying we need to take more of this process and have it approved by declaratory judgment by the FISA court and having them review what we are doing, not all the information, but what we are doing, and render an opinion whether or not this is within the authority and purview of the President.

We are in a big debate. As a matter of fact, we will take it back up this Thursday in this Judiciary Committee about whether we should give more authority to the Attorney General to pursue this through the FISA court, more authority to Congress, or to private individuals to bring FISA actions.

Do you have any thoughts you are willing to share on that?

Mr. WAINSTEIN. Yes, sir. I know that there have been a number of proposals and pieces of legislation that have been proposed to address the intersection of the terrorist surveillance program and the FISA court work. Those proposals and your question points up, I think, a very important issue for this Committee and for the Government and for the country that raises separation of powers issues, raises practical issues of our ability to defend ourselves against international terrorists, to have an early warning system that can protect us from terrorists, but also have a scheme by which the FISA courts approves warrants in appropriate circumstances. All of these issues are raised by that debate and I think it is a healthy debate to have.

I have to admit that I am not well-versed on the particulars of each of the proposals, and not being over at the Department yet working on those matters, I think it would be premature to weigh in with an opinion as to one proposal or another.

I will say, however, that I think this is—if I am fortunate enough to be confirmed, this is an area that I will be looking at closely. I will be soliciting the input of the professionals over at the Department of Justice and throughout the intelligence community as to what is practical and what is best going to protect civil liberties, but at the same time help us defend against terrorists. And I will be open to working and soliciting input and providing input to the Committee. So I look forward to that if I am confirmed.

Senator BROWNBACk. Let me build on this a little bit. I have been in some of these hearings and I have been in on a fair amount of the discussion. Intelligence is, if not our lead tool, one of our most important tools in this war on terrorism. There is just no question about it. A lot of people are complaining about our borders being too porous, our southern border. Yet, the number of legal en-

tries we have a year into the country is over 250,000. The 9/11 terrorists all entered legally into the United States.

It is an intelligence operation that we have got to have that can catch people. So, to me, intelligence is just a paramount issue. At the same time, we have got to convince people that in this decades-long war on terrorism that we are going to be in for some period of time that the way we are doing this is right and is approved by an independent court, by an independent body.

That is why I have been supportive of having more of these programs be reviewed by an outside set of eyes so that we can maintain public support for the desperately needed intelligence information we have to have. We have got to have this information if we are going to protect people. Yet, we are democracy and we have to have people's support to do this.

That is why I like the example that one of my colleagues put forward when he was saying we need to have these intelligence programs be reviewed by an independent set of eyes, but it needs to be a sieve that the water can pass through. And it is checked, but it is not stopped, so that we can get the information; we can move the programs on through.

I don't expect you to answer that. You are not at the Department yet. It is a big policy issue, but as somebody that represents a State that is concerned about maintaining public support for the war on terrorism, and particularly intelligence-gathering in the war on terrorism, I think this is important that we get this one right and that we build bipartisan public support for intelligence-gathering as much as we can. You are going to be right at the intersection of determining what to do in that particular area.

Mr. WAINSTEIN. Yes, Mr. Chairman, and I appreciate your comments and I appreciate your sentiments. And I appreciate that I will, if I am fortunate enough to be confirmed, be in a position where I will be working with these issues substantively, but I will also be sensitive to the public acceptance of what it is we are doing.

I can tell you as a prosecutor for many years—most of my 17 years in the Department of Justice has been as a criminal prosecutor—the credibility that we have is that we are doing justice and we are doing things right, and that witnessed, jurors, even suspects or defendants, believe that when we take action, we take action that is appropriate, the end result of which is to do justice and do right.

That is a very important credibility to have, and that applies across the board in both the law enforcement world and in the intelligence world. And that is an issue that I do know is something that the Department is sensitive to and is sensitive to in this context. And I expect that if I am involved in the ongoing discussions about these programs, whatever programs might be ongoing which you might be referring to, that that is something I will be looking at very closely.

Senator BROWNBACK. Good, because I just think it is important for us in our maintenance of public support for the war on terrorism which we have to have.

Mr. Wainstein, thank you very much for coming here and for being willing to assume this position. I am hopeful that we can move that through the process and get it approved. We need you

on board now because we have got to get these programs reviewed. It was considered important by the Congress that this position be established so that we could have somebody that is at that juncture of intelligence-gathering and national security that is at DOJ and working with the Attorney General. So I am hopeful we can approve you on a rapid basis.

Mr. WAINSTEIN. Thank you very much, Mr. Chairman.

Senator BROWNBACK. Senator Feingold, I didn't see you over there so quiet. I am done. Do you have some questions to ask?

**STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR
FROM THE STATE OF WISCONSIN**

Senator FEINGOLD. I do. Thank you, Mr. Chairman. First, let me praise you and the nominee for the comments you have just made about the need to raise these kinds of issues and to be sensitive to these kinds of issues, not only because it is our system of Government and has to do with people's rights, but also if we want to be successful in the fight against terrorism.

It is my belief that although we have done many things right since 9/11, one of the things we haven't done right is showing sufficient public sensitivity to this aspect, which this experienced prosecutor just indicated was so important in his work as a prosecutor. So I think your comments are absolutely right in terms of the efficacy in the fight against terrorism and the need to keep public confidence that we are doing the right thing.

Mr. Wainstein, you have an important responsibility as the first nominee to the position of assistant attorney general for the newly created National Security Division. In a very real sense, as you know, you owe your job, should you be confirmed, to the Congress. This new division and your position to lead it were created in the recently passed PATRIOT Act reauthorization bill.

While I voted against that bill, I certainly support the goals of the new division, and I very much hope that it will serve the purpose for which it was created, to bring the disparate parts of the Department that deal with intelligence and national security together under a single chain of command, thereby minimizing turf battles and allowing the Department to more efficiently carry out its work to fight and prevent terrorism and espionage. As the first assistant attorney general for this new division, you will shape the procedures and guidelines for your successors, and will therefore have a big influence on whether the new division succeeds.

I think you also have an important role in repairing the rift that has developed during this administration between the Department and the Congress. The Attorney General hardly ever appears before this Committee or its counterpart in the House. When he does, he won't answer our questions. When we ask him followup written questions, he takes a very long time to answer them or provides non-responsive answers.

The administration has pursued a confrontational and highly political approach to reauthorizing the PATRIOT Act, refusing to agree to even the modest and reasonable changes to the Act that Chairman Specter proposed and this Committee adopted by unanimous vote.

Then we have the NSA spying scandal which I think has presented a constitutional crisis the likes of which this country has not seen for a generation. With the full support of the Department of Justice, the administration takes the position that the President has the inherent power to violate any law that touches on national security or terrorism. That theory raises the question of whether much of what we do in this Committee or in the Senate is an elaborate charade with no real effect, because in the end the administration has claimed for itself the power of this branch of Government to write the laws and the power of the third branch of Government to interpret them.

So obviously, because of that history, you have the opportunity and need to, I think, do some fence-mending, not personally, but with regard to this record of the administration, and I hope you are eager to do that. Protecting Americans from terrorism is our No. 1 priority in Congress, as it is in the Department, and this Committee does want to be helpful in your work.

I would like to ask you first whether you agree that the fight against terrorism, with all its complexities and dangers, can be better carried out with the legislative and executive branches of Government working together than if they are at loggerheads.

Mr. WAINSTEIN. Thank you very much for your words, Senator. As to the question about how we can best pursue the war against terrorism, absolutely no question, the best way that we can pursue that war and the best way we can protect our country men and country women against crime or terrorism, any kind of threat, is working jointly, both Congress and the executive branch.

I have seen examples of that over the years in the law enforcement context where Congress has provided the tools that we need to protect our citizens. I have seen it in the PATRIOT Act where, thanks to, I think, some very sound legislation by Congress, we now have a balanced PATRIOT Act which has provided us the tools we need to fight the war against terror, but also has provided a number of new safeguards that weren't in place prior to the reauthorization act.

So I see that as an example of the benefit of working jointly between—having the executive branch work closely with the legislative branch. And I would see that it would be my duty to work very closely, to seek your input, and to provide you input where it would assist you in satisfying your duties.

Senator FEINGOLD. I am a member of the Intelligence Committee, as well as the Judiciary Committee. So I, of course, agree with the Chairman's comments about the need for intelligence and I understand very well the need for secrecy in intelligence matters. But I also believe that in many cases this administration has pursued policies of secrecy for political reasons rather than for national security reasons.

Can we count on you to be a voice in internal DOJ deliberations for more cooperation and consultations with Congress and more openness with the public?

Mr. WAINSTEIN. Thank you, Senator. You have gotten to, I think, a point that relates to a point raised by the Chairman about the importance of instilling confidence in the public and in the Congress in our programs and our activities. And I think the only way

to do that is to have contact and to talk about the issues we have in common, to have open channels of communication, and I will endeavor to do that.

I think it will be particularly critical as we stand up this new division to seek the assistance and the input of Congress and to let you know what we are doing because you will be very interested in seeing how our organization reflects the best ideals of defense of our national security as well as protecting civil liberties.

Senator FEINGOLD. Just to be clear in the record, it is my hope that you will be an advocate for what you just said in the internal DOJ deliberations.

Mr. WAINSTEIN. Yes, Senator, I will be an advocate for that to anybody.

Senator FEINGOLD. From July 2002 until May 2004, you worked at the FBI, first as general counsel to the FBI and then as Director Mueller's chief of staff. Were you read into the NSA program during that time?

Mr. WAINSTEIN. I was aware of the program, yes, sir.

Senator FEINGOLD. And did you ever express concern about the legality in constitutional and internal deliberations within the FBI or the Department of Justice?

Mr. WAINSTEIN. No. When I got there to the FBI, Senator—I got there in, I think, the summer of 2002, and the program had been ongoing for, I think, eight or 9 months at that time and I was never asked to render any opinion on the program. I never was asked to be involved in any operational matters relating to the program. I was familiar with the program and that is about the extent of it.

Senator FEINGOLD. So you never did render any kind of opinion as to your view as to the legality of the program?

Mr. WAINSTEIN. No, I didn't, sir.

Senator FEINGOLD. If confirmed to your new position, you will head the section of the Department that is responsible for submitting applications under FISA to the Foreign Intelligence Surveillance Court. That statute and that court, of course, were bypassed by the President authorizing the NSA warrantless spying program.

Both Representative Jane Harman of the House and Senator Dianne Feinstein, a member of this Committee and the Senate Intelligence Committee, have received as much information about the NSA program as any Member of Congress. They both have said they believe that this program could be carried out consistent with the current FISA statute.

Are you comfortable with undertaking this new position with overall responsibility for complying with the FISA statute knowing that the administration is undertaking a significant surveillance program outside of that law?

Mr. WAINSTEIN. Yes, Senator, and you have obviously touched on a very important debate that is ongoing right now about the parameters of the FISA statute and the constitutionality of the terrorist surveillance program. I have read the publicly available documents both supporting the program and those saying that the program is not constitutional.

I have found the 42-page white paper that was submitted by the administration to provide a fairly compelling justification for the

program. If I am fortunate enough to take this job, one of the first things I would do is I would look at the intersection of those two programs, the FISA operations and this program, to make sure that in practical terms they are working in tandem and they are working appropriately. And I imagine I would also take a look at the law and if I have an opinion about the law and the legal justification for the program, I will voice that opinion.

Senator FEINGOLD. Obviously, I respect your view and would not have expected you to say something different. All I can say is I have been involved with the law for decades myself and I have reviewed all these materials and I have rarely seen a weaker case for any legal argument in my life.

You indicated that you believe that the white paper is compelling?

Mr. WAINSTEIN. Well, Senator, I have read that and I have to admit that I have not gone beyond to look at the back-up materials, to look at the case law, read the cases cited. And I haven't looked at the variety of position papers that are at odds with that, but I have—

Senator FEINGOLD. Fair enough, but with regard to the authorization of military force for Afghanistan as being a justification for this, which is included in the White House paper, do you find that compelling as a justification for the NSA surveillance program outside of FISA? Do you find that compelling?

Mr. WAINSTEIN. Once again, I haven't gone back and really noodled through it as I would before I felt comfortable as a responsible lawyer rendering an opinion on something. But I looked at the analogy of the Hamdi case, where the Supreme Court found that detentions were authorized by the authorization of the use of military force, and that seemed to be an analogous situation and it seemed to apply here.

Senator FEINGOLD. Well, we have been back and forth on this with Senator Graham and others on the Committee. Fair enough. I know that is not your purpose in being here, but I ask these questions to highlight obviously the significance of this vis-a-vis your position; that you have an opportunity, and you are obviously highly qualified to do it, to try to help us improve this relationship between the executive and the Congress in this area. And at the core of it is our ability to believe that the President and the executive is not overreaching with regard to the law.

So that is a concern I have, but I certainly want to work with you in a cooperative way to resolve our differences. I wish you well.

Thank you.

Mr. WAINSTEIN. Thank you, Senator. I appreciate those kind words, and I assure you that I will work with you with the same desire to serve each other's purposes and provide each other communication and information that we need.

Senator FEINGOLD. Thank you, Mr. Chairman.

Senator BROWNBACK. Thank you, Senator Feingold, and I appreciate the thoughts. And I can guarantee you, Mr. Wainstein, they come from a deep-felt heart on the part of Senator Feingold to try to protect the rights of the individual. It is that sort of bipartisan approach on intelligence-gathering that I am hopeful we can move forward with, and that you can really be at the vortex of making

that happen. It is needed if we are going to maintain the support that we need for the war on terrorism for the decades that it is going to take to prosecute this war. We have got to get everybody's support in it and keep it there. So I hope you continue to work with us on this Committee, Senator Feingold and myself and many others, to do that.

Mr. WAINSTEIN. Thank you, Mr. Chairman. I appreciate your support.

Senator BROWNBACK. Thank you.

We will maintain the record open for the requisite number of days. We appreciate your attendance. The hearing is adjourned.

Mr. WAINSTEIN. Thank you, sir.

[Whereupon, at 4:19 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Sandra Segal Ikuta
c/o California Resources Agency
1416 9th Street
Sacramento, California 95814

May 15, 2006

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman,

Enclosed please find my responses to post-hearing questions from Senator Boxer.

Yours very truly,



Sandra Segal Ikuta

cc: The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 2051

Responses of Sandra Ikuta
Nominee to the U.S. Court of Appeals for the Ninth Circuit
to the Written Questions of Senator Barbara Boxer

1. **Do you believe that the Constitution provides a right to privacy and, if so, under what circumstances does it apply? Does this right to privacy include the right to use contraceptives and terminate a pregnancy?**

Response: The Constitution protects privacy rights in a range of circumstances. Privacy is protected by the Establishment Clause and by the Free Exercise Clause of the First Amendment, by the Third Amendment's restrictions on the government's quartering soldiers in private homes, and by the Fourth Amendment's guarantee of the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. In addition, the Supreme Court has ruled repeatedly that the liberty protected by the Due Process Clause of the Fourteenth and Fifth Amendment includes substantive protection of certain privacy rights. The Supreme Court has ruled that a Constitutional right to privacy provides protection for the use of contraceptives (*Griswold v. Connecticut*, 381 U.S. 479 (1965), *Eisenstadt v. Baird*, 405 U.S. 438 (1972)) and for a woman's right to terminate a pregnancy (*Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992)). If I am confirmed, I would fairly and faithfully apply these precedents.

2. **Many commentators have characterized *Planned Parenthood v. Casey* as a super-precedent. Do you agree that *Casey* is a super-precedent? As a judge on the Ninth Circuit, would you follow the precedent set forth in *Roe* and *Casey*?**

Response: From the perspective of an inferior appellate court, the holdings of *Casey*, like all other Supreme Court precedent, are binding on the circuit courts and cannot be reversed by any circuit court decision. *Casey* is Supreme Court precedent both with respect to its reaffirmation of the validity of the central holding in *Roe v. Wade* and with respect to its application of the doctrine of stare decisis. If I am confirmed, I would follow the rulings set forth in *Casey* without reservation.

3. **Since 1937, the Supreme Court has granted Congress flexibility in passing laws under the Commerce Clause, including laws that regulate labor standards, crime, and racial discrimination. Recently, however, the Supreme Court has shifted course and increasingly struck down acts of Congress as exceeding its powers under the Commerce Clause. What do you believe is the extent of Congress's authority to legislate under the Commerce Clause?**

Response: Congress has exceptionally broad power under the Commerce Clause to "make all Laws which shall be necessary and proper" to "regulate Commerce ... among the several States." U.S. Const., Art. I, sec. 8, cls. 2 and 18. The Supreme Court has ruled that Congress may regulate "three broad categories of activity" under its commerce power. *United States v. Lopez*, 514 U.S. 549, 558 (1995). These categories are: the use of the channels of interstate commerce; the instrumentalities of interstate commerce or

persons or things in interstate commerce; and activities that substantially affect interstate commerce. *Id.* at 558-559. Although the Supreme Court has delineated some constitutional boundaries to Congress's authority under the Commerce Clause (*see, e.g., Lopez, United States v. Morrison*, 529 U.S. 598 (2000)), the Court recently reaffirmed the long line of cases that establish Congress's authority "to regulate purely local activities that are part of an economic class of activities that have a substantial effect on interstate commerce." *Gonzales v. Raich*, 125 S.Ct. 2195, 2205 (2005) (citing *Wickard v. Filburn*, 317 U.S. 111, 128-129 (1942)) (internal quotations omitted). If I am confirmed, I would follow the precedents of the Court and the decisions of the Ninth Circuit with respect to the extent of Congress's authority to legislate under the Commerce Clause.

4. **What is the proper role of the federal government in enacting laws to protect the environment? Under the Constitution, how far can Congress go in imposing restrictions on people and businesses to protect the air and water? How far can the states go in enacting laws to protect the environment, and does it matter whether or not there is federal legislation on the same subject?**

Response: Existing federal environmental laws, including the Clean Water Act, the Clean Air Act, the Endangered Species Act, and the Resource Conservation and Recovery Act, broadly address activities that could affect environmental quality on a national scale. With a few exceptions, the Court has not delineated constitutional limitations to Congress's authority to enact such federal environmental laws. The Court recently reaffirmed that Congressional enactments are entitled to a presumption of constitutionality and should be invalidated "only upon a plain showing that Congress has exceeded its constitutional bounds." *Morrison*, 529 U.S. at 607. Any question regarding the authority of Congress to enact a federal environmental law must be addressed in the context of the legal issue and facts raised by a specific case, in light of Supreme Court and circuit precedent.

Under our system of government, a state has broad authority to enact environmental laws. This authority is limited by the Supremacy Clause, which states that "the laws of the United States ... shall be the Supreme Law of the land." U.S. Const. art. VI, cl. 2. There is an extensive body of case law guiding preemption analysis. In general, a court must ascertain whether Congress intended to preempt state enactments. Congress may expressly state its intent to preempt state legislation, or a court may infer this intent if Congress has occupied an entire field of regulation, or if it is impossible to comply with both state and federal law, or if state law stands as an obstacle to the implementation of Congress's purposes in enacting the federal legislation. *See, e.g., Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 698-699 (1984). The Court has applied its preemption analysis to state environmental laws in a number of cases. *See, e.g., Bates v. Dow Agrosciences*, 125 S.Ct. 1788 (2005); *Engine Mfrs. Assn v. South Coast Air Quality Mgmt. Dist.* 541 U.S. 246 (2004); *United States v. Locke*, 529 U.S. 89 (2000)). The question whether any particular state environmental law has been preempted by a federal enactment must be analyzed in the context of a specific case and in light of Supreme Court and circuit precedent. If confirmed, I would faithfully and impartially apply the law and precedents in this area.

5. **Do you believe there are judicially enforceable limits to the President's power as Commander-in-Chief in times of national crisis? If so, what are those limits?**

Response: I agree that there are judicially enforceable limits to the President's power as Commander-in-Chief in times of national crisis. The President's power is limited by the President's obligation to follow the law. As stated by Justice O'Connor in *Hamdi v. Rumsfeld*, 542 U.S. 507, 124 S.Ct. 2633, 2650 (2004), "a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens." Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634 (1952), provides an accepted framework for analyzing the President's authority. Justice Jackson stated that the President's authority is at its maximum when the President "acts pursuant to an express or implied authorization of Congress." The President's authority resides in a "zone of twilight in which [the President] and Congress may have concurrent authority" when Congress has neither granted nor denied the President authority to act. The President's authority is "is at its lowest ebb" when the President's actions are inconsistent with Congress's will, because the President can then "rely only upon [the President's] own constitutional powers minus any constitutional powers of Congress over the matter." *Id.* at 635-637. If confirmed, I would apply the precedents of the Supreme Court, including the framework established by *Youngstown Sheet & Tube Co.*, and the precedents of the Ninth Circuit, to analyze any case raising this legal issue.

6. **What do you see as the limits on the scope of Congress's power under the Equal Protection and Due Process clauses of the 14th Amendment? Does a law violate the Equal Protection Clause if it affects different groups differently, or must there be a discriminatory intent? Is there anything in your background that indicates that you will aggressively enforce anti-discrimination laws?**

Response: Congress has broad authority to enact enforcement measures to remedy or prevent unconstitutional actions under each of the Civil War Amendments. *Oregon v. Mitchell*, 400 U.S. 112, 127-128 (1970). In recent decisions, the Court has delineated certain outer limits on the scope of Congress's enforcement authority under Section 5 of the Fourteenth Amendment. Specifically, the Court has indicated that Section 5 does not authorize Congress to enact legislation that changes the substance of the rights protected by the Fourteenth Amendment. *City of Boerne v. Flores*, 521 U.S. 507, 529-536 (1997). The Court is continuing to develop its analysis of the scope of Congress's authority under Section 5 of the Fourteenth Amendment. *See, e.g., United States v. Georgia*, (No. 04-1203, Jan. 10, 2006) (holding that Title II of the Americans with Disability Act of 1990 abrogates state sovereign immunity for conduct that actually violates the Fourteenth Amendment). If confirmed, I would fairly apply the precedent of the Supreme Court and the circuit in this area.

Under Supreme Court precedent, a discriminatory intent is necessary to establish a violation of the Equal Protection Clause. *See, e.g., Washington v. Davis*, 426 U.S. 229, 240 (1976) (noting the "basic equal protection principle" that "the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially

discriminatory purpose.”) The Court further clarified, however, that “an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another.” *Id.* at 242.

Due to my family’s and my husband’s family’s background, I am very aware of issues raised by discrimination based on race, religion and gender. While in private practice, I participated in efforts to recruit and retain qualified lawyers from all sectors, including from minority and disadvantaged groups. If confirmed, I would fairly and faithfully apply all anti-discrimination laws.

7. **In *Western States Paving Co. v. Washington State Dept. of Transportation*, 407 F.3d 983 (9th Cir. 2005), a Ninth Circuit panel held that the Transportation Equity Act for the 21st Century, which authorizes the use of race and sex-based preferences in federally funded transportation contracts, was facially constitutional but unconstitutional as applied by Washington. Do you agree with that decision? Please explain your reasoning.**

Response: Under Supreme Court precedent, governmentally imposed racial classifications must be analyzed under strict scrutiny, that is, such classifications must be “narrowly tailored measures that further compelling governmental interests.” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). In *Western States Paving Co.*, the Ninth Circuit applied this general rule to the specific circumstances of the case before the court. In upholding the Transportation Equity Act for the 21st Century (TEA-21) from a facial attack, the Ninth Circuit determined that Congress had a compelling basis for racial and gender classifications and that the use of race and gender classifications was a “narrowly tailored means of remedying the effects of race- and sex-based discrimination within the transportation contracting industry.” *Id.* at 995. Conversely, the Ninth Circuit struck down Washington’s program implementing TEA-21 because Washington failed to demonstrate that its use of race and gender classifications was narrowly tailored. *Id.* at 1002. This decision constitutes binding precedent in the Ninth Circuit, and therefore as a judicial nominee it would not be appropriate for me to express agreement or disagreement with this decision.

8. **In *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002), the Ninth Circuit held that the Second Amendment does not grant an individual right to own or possess firearms. Do you agree with that decision? Please explain.**

Response: In *Silveira*, the Court of Appeals for the Ninth Circuit examined several interpretations of the Second Amendment and reaffirmed its earlier conclusion that the Second Amendment’s right to bear arms is a collective right of the people to maintain state militias, and not an individual right to own weapons. The Supreme Court has not yet provided guidance on this specific issue. This decision constitutes binding precedent in the Ninth Circuit, and therefore as a judicial nominee it would not be appropriate for me to express agreement or disagreement with this decision.

9. **Which Supreme Court Justice, current or former, do you most admire? Why?**

Response: I owe an enormous debt of loyalty and affection to Justice Sandra Day O'Connor. I had the honor of serving as her law clerk during October Term 1989. It was a great privilege to learn from her example.

10. **How would you describe your judicial philosophy? Do you believe in strict constructionism or do you see the Constitution as a living, evolving document?**

Response: My judicial philosophy is to follow the law, as interpreted by the Supreme Court precedent and the precedent of my circuit, fairly and impartially, putting aside all personal views. I believe that although the Constitution does not change, it must be interpreted to apply to new and different factual situations that arise over time.



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530
May 10, 2006

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are the responses of Kenneth Wainstein, the nominee to be Assistant Attorney General for the National Security Division, to the written questions from Senator Leahy following Mr. Wainstein's confirmation hearing.

Sincerely,

A handwritten signature in dark ink that reads "William E. Moschella".
William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Patrick Leahy
Ranking Minority Member

Responses to Written Questions from Senator Leahy for Kenneth L. Wainstein
Nominee for Assistant Attorney General for the National Security Division

1. The newly created position of Assistant Attorney General of the National Security Division is designed to bring under one umbrella the Department's primary national security sections, as authorized by the recent renewal of the Patriot Act. One of the reasons we have been told this consolidation is necessary is that there has been inadequate coordination between the counter-terrorism and criminal operations.
 - (a) In what ways has this lack of coordination hindered the Department's efforts to combat terrorism?
 - (b) How will this consolidation allow the Department to fight national security threats more effectively?

ANSWER: Prior to the dismantling of the wall between intelligence and law enforcement operations, there were substantial concerns that those charged with identifying and disrupting national security threats could not see all the "dots" and therefore could not connect them. In light of recent changes, information flows more readily between the criminal prosecutors and intelligence attorneys within the Department. In the period following the dismantling of the wall, coordination has been greatly increased. But I believe that the conduct of our national security investigations can be improved by the Department's reorganization. I expect that, when prosecutors and intelligence attorneys are brought into one Division, with management focused on fully integrating our national security operations, information will flow more quickly and efficiently. So, for example, an attorney responsible for seeking court approval for electronic surveillance under the Foreign Intelligence Surveillance Act (FISA) can call upon a terrorism prosecutor in the same Division for assistance in obtaining information that may be critical to the FISA application. At a later point in the same investigation, if the prosecutor needs to assess the issues raised if the government attempts to use the results of the FISA order in its prosecution, the prosecutor will be able more quickly to reach out to his colleague who drafted the court application for advice and insight.

In addition, under the Department's current structure, the Office of Intelligence Policy and Review and the Counterterrorism and Counterespionage Sections do not have a common supervisor below the Deputy Attorney General. With the creation of the National Security Division (NSD), decisions that require the balancing of criminal and intelligence equities will be made by the Assistant Attorney General of the NSD, rather than at a higher level by an official who also has responsibilities across the entire Department. Finally, the Department will also have an official at the Assistant Secretary level who can deal more effectively with his/her counterparts at other Departments and agencies, and with the National and Homeland Security Councils on behalf of the Attorney General and the Deputy Attorney General, when appropriate.

2. Bringing together under one authority all of the Justice Department's national security, counterterrorism, counterintelligence and foreign intelligence surveillance operations follows a recommendation made in the March 2005 report by the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (WMD Commission).
 - (a) Do you agree with the Report's conclusions regarding the deficiencies and inefficiencies within and between many of DOJ's security and intelligence units?

ANSWER: The WMD Commission noted that the Department's three primary national security components are located in different divisions, with no individual below the Deputy Attorney General who can supervise all three. The Deputy Attorney General, of course, has responsibilities across the entire Department. The WMD Commission recommended that an Assistant Attorney General for National Security should be placed in charge of all three elements and serve as a single focal point on all national security matters. I agree with the WMD Commission that the new National Security Division (NSD) structure will be more effective, in that the Department will now have a senior official whose sole commitment is to the most pressing national security matters. Among other things, the Assistant Attorney General will be properly positioned to make important decisions or recommendations concerning the balancing of criminal enforcement and intelligence equities.

I also agree with the WMD Commission that the NSD will more closely align the Department's national security elements with the Intelligence Community. This is particularly important in light of the recent changes that have resulted in the creation of the Office of the Director of National Intelligence and the Federal Bureau of Investigation's creation of a National Security Branch housing Counterterrorism, Counterintelligence and the Intelligence Directorate.

- (b) Why do you think these problems arose and why have they taken so long to address?

ANSWER: I have not had occasion to study the historical reasons for the structuring of the Department's national security components. Since 9/11, however, there have been a series of changes to many of the government agencies charged with national security responsibilities, including the creation of the Department of Homeland Security, the Office of the Director of National Intelligence and the Intelligence Directorate and then the National Security Branch of the Federal Bureau of Investigation. The creation of the National Security Division is a natural outgrowth of these other events.

3. This consolidation is intended by the Department to reduce the bureaucratic red tape that had interfered with the ability of the Department's primary organizational units handling national security matters to coordinate with one

another. Can you discuss the biggest problems that have arisen as a result of red tape preventing immediate action being taken or results achieved?

ANSWER: I am not aware of specific examples of delay or lack of coordination resulting from the Department's current structure that prevented immediate action being taken or results achieved. I do think, however, that there is a risk that the current structure may complicate decision-making in fast moving situations, because OIPR and the Department's prosecutors do not share a common supervisor below the level of the Deputy Attorney General. As a result, when there is a dispute between intelligence and prosecution equities, it must be briefed to, and decided by, the Deputy Attorney General. Obviously, national security matters are a priority for the Deputy Attorney General, and he makes the time to resolve such matters quickly, but it may result in disruption to his other duties.

There are circumstances in which a question arises in OIPR, and the resolution of that question requires input from prosecutors, or vice versa. Under the current structure, this may require that two separate organizations, with two separate chains of command, work through the question. As a result, more time is invested in the resolution of the question than would be the case if all the parties were housed in a single Division.

4. The newly formed National Security Division will include attorneys from the Office of Intelligence Policy and Review (OIPR), which specializes in matters involving the Foreign Intelligence Surveillance Act (FISA). How would you characterize the role of OIPR in the FISA process, in terms of its relationship with the investigators who seek FISA warrants on the one hand, and the FISA court on the other? Would you expect this consolidation to change the role of OIPR in any way? Is change desirable?

ANSWER: OIPR attorneys are responsible for preparing applications to be presented to the Foreign Intelligence Surveillance Court (FISC) and thus are always involved with intelligence investigators in the discussion and preparation of cases presented to the FISC. It is my understanding that representatives from OIPR also have regular discussions with representatives from the FBI, United States Attorneys' Offices, and the Criminal Division, as well as other intelligence agencies, at a variety of levels with respect to many ongoing matters. It is also my understanding that representatives from OIPR meet on a regular basis with representatives from the Criminal Division, particularly the Counterterrorism Section and the Counterespionage Section, to discuss potential and pending national security investigations.

With the creation of the National Security Division, OIPR will be brought into an even closer day-to-day working relationship with other key operational Justice Department counterparts in the war on terrorism such as the Counterespionage and Counterterrorism sections that are currently located in the Criminal Division. This co-location in a single division, headed by an Assistant Attorney General to whom all three entities will report,

should enhance further the Department's ability to coordinate fully all aspects of its national security activities. Among other things, the new organization will facilitate implementation of the Attorney General's March 6, 2002, Memorandum that requires full coordination and information sharing among Department entities with national security responsibilities, including OIPR, the Counterterrorism and Counterespionage Sections, the FBI, and United States Attorneys' Offices. This enhanced coordination is expected to further improve OIPR's contributions to the Department's ability to detect, deter, and disrupt terrorism at home and abroad. Coordination that occurs early and is at every step a part of both investigative and prosecution processes is key to successful outcomes of national security investigations that are consistent with the law and protect the civil liberties of Americans.

OIPR also plays a critical role in the FISA process as the government's representative before the FISA court. The relationship between OIPR and the FISA court is important, and I understand that they currently have a strong one. I do not expect that these important relationships will be affected by the creation of the National Security Division.

5. What are your general impressions of the FISA process as it currently operates? What are its strengths? What are its weaknesses?

ANSWER: The FISA statute has many requirements as to the manner in which applications are made and orders issued under that Act that are intended to provide the government with flexibility in conducting surveillance for purposes of gathering foreign intelligence while ensuring the protection of civil liberties under the Constitution of the United States. For example, FISA requires that each application contain a statement of facts supporting the application, a certification from a high-ranking official with national security responsibilities, and the signature of the Attorney General, Acting Attorney General or Deputy Attorney General. The Act also requires the FISC to issue detailed orders when approving an application. All of the participants in the FISA process are engaged in a continuous review process to ensure that it is as efficient and effective as possible and that unnecessary bureaucratic impediments are identified and eliminated.

The creation of the new division is an opportunity to review all of our national security processes, including the FISA process to see where improvement can be made.

6. Please describe any involvement you had with the National Security Agency's warrantless wiretapping activities, including any discussions with the White House or the Attorney General, both (a) before the public disclosure of these activities in December 2005 and (b) thereafter.

ANSWER: I first learned about the NSA's Terrorist Surveillance Program (TSP) at some point after I started my service as General Counsel of the FBI in July 2002. As the Attorney General has publicly explained, the President first authorized the TSP in October, 2001, so it had been in existence for some time before I became aware of it. While I was exposed to the TSP in the course of my work at the FBI, I was not responsible for any aspect of its implementation, operation or authorization. I do not recall having any discussions with White House personnel or the Attorney General about the TSP.

7. In a speech at Georgetown University, the Attorney General talked about the cumbersome bureaucratic red tape involved in initiating a FISA emergency authorization. In your opinion, is this red tape caused by something Congress has or has not done, or by the bureaucracy put in place by OIPR itself?

ANSWER: In his speech at Georgetown University on January 24, 2006, the Attorney General stated in regard to the emergency authorization process under FISA:

"People should know that we do not approve emergency authorizations without knowing that we will receive court approval within 72 hours. FISA requires me, the Attorney General, to determine in advance that a FISA application for that particular intercept will be fully supported and will be approved by the Court before an emergency authorization may be granted, and that review process itself can take precious time."

"To initiate surveillance under a FISA emergency authorization, it is not enough to rely on the best judgment of our intelligence officers alone. Those intelligence officers would have to get the sign-off of lawyers at the NSA that all provisions of FISA have been satisfied, then lawyers in the Department of Justice would have to be similarly satisfied, and finally as Attorney General I would have to be satisfied that the search meets the requirements of FISA. And then we would have to be prepared to follow up with a full FISA application within the 72 hours."

It is my understanding that the Attorney General was describing the protocol for securing emergency FISA authority, which is designed to ensure that the Department meets its obligations under the FISA statute. In addition to following this protocol, the Department must also satisfy within 72 hours all of the statutory elements of a FISA application (as listed in the response to Question 5 above), an effort that requires a significant commitment of resources and manpower.

SUBMISSIONS FOR THE RECORD



STATEMENT OF SENATOR GEORGE ALLEN
Introduction of Ken Wainstein to be
Assistant Attorney General for National Security.
Senate Judiciary Committee

Mr. Chairman and members of the Committee, I thank you for the opportunity to appear before this committee and talk to you about one of my constituents, Ken Wainstein. He is here today with his wife, Elizabeth, two of his three daughters, Ellie and Mackie, and his parents. Ken grew up outside Alexandria, Virginia, attended the University of Virginia, and now makes his home in Alexandria, where he and his family are active members of the community.

Ken has dedicated his career to justice and the Justice Department. He started out as an Assistant U.S. Attorney in the Southern District of New York, and then transferred to the U.S. Attorney's Office here in the District of Columbia. During his tenure in that Office, Ken specialized in prosecuting homicide and federal racketeering cases against violent street gangs, and eventually was appointed Interim United States Attorney in 2001.

Ken then gained valuable experience and insight into our war on terror, when he served as General Counsel and as Chief of Staff for FBI Director Robert Mueller. In May of 2004, Ken returned to the U.S. Attorney's Office, and he was subsequently nominated and confirmed as United States Attorney. As U.S. Attorney, Ken has proudly worked alongside the dedicated public servants in that Office to investigate and prosecute cases ranging from domestic violence to public corruption.

Under Ken's leadership, the Office has maintained a strong tradition of service to the residents of the District of Columbia, building on its community prosecution outreach effort and establishing a Homicide Section that is strengthening murder prosecutions in the District and helping to take killers off the streets. At the same time, the Office has significantly enhanced its role in the prosecution of white-collar and other federal cases

that have broader and often national implications. Ken and his colleagues have prosecuted a number of important fraud and public corruption cases. Last year Ken established a National Security Section that focuses on the terrorism, espionage, export control and other cases that protect our nation against threats from overseas.

It is my opinion that the President has chosen well with his nomination for the position of Assistant Attorney General for National Security. With his experience in both the prosecutorial and the intelligence worlds, Ken is an ideal choice for this position. I respectfully urge this committee to move quickly toward his confirmation.

JOHN WARNER
VIRGINIA

COMMITTEES:
ARMED SERVICES, CHAIRMAN
ENVIRONMENT AND PUBLIC WORKS
SELECT COMMITTEE ON INTELLIGENCE
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

United States Senate

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SENATOR WARNER'S STATEMENT TO THE JUDICIARY COMMITTEE ON THE NOMINATION OF KENNETH L. WAINSTEIN TO SERVE AS ASSISTANT ATTORNEY GENERAL FOR THE NATIONAL SECURITY DIVISION MAY 2, 2006

Chairman Specter, Senator Leahy, and my other distinguished colleagues on the Senate's Judiciary Committee, I thank you for holding this confirmation hearing.

Today, I am pleased to introduce a fellow Virginian, Mr. Kenneth L. Wainstein, who has been nominated to serve as Assistant Attorney General for the National Security Division. Mr. Wainstein is joined today by his father Leonard, his mother, Eleanor, his wife Elizabeth, and his two daughters, Ellie and Mackie.

As the Committee knows, the position of the Assistant Attorney General for the National Security Division is a newly created position through the Reauthorization of the USA PATRIOT Act. The position was created by Congress in an effort to streamline the Department of Justice's national security, counter-terrorism, counter-intelligence and foreign intelligence surveillance operations under a single authority. The Assistant Attorney General for the National Security Division is responsible for leadership and oversight of all the Division's programs and policies.

Without a doubt, serving as the first Assistant Attorney General for the National Security Division will be an incredibly challenging task. Based on his extensive experience within the Department of Justice, I believe that Kenneth Wainstein is up to the challenge.

In 1984, Mr. Wainstein received his undergraduate degree from the University of Virginia, and in 1988 he received his law degree from Boalt Hall School of Law at the University of California at Berkeley.

Upon graduation, Mr. Wainstein clerked for the Honorable Thomas Penfield Jackson of the United States District Court for the District of Columbia. Subsequent to his judicial clerkship, he began his work as a federal prosecutor and served as an Assistant United States Attorney in the Southern District of New York. In 1992, Mr. Wainstein transferred to the U.S. Attorney's Office in the District of Columbia where he served for nine years, specializing in the prosecution of federal racketeering cases against violent street gangs.

In 2001, Mr. Wainstein became the Director of the Executive Office for United States Attorneys. This position serves as a liaison between the 94 U.S. Attorneys offices and the Department of Justice. In 2002, Mr. Wainstein joined the Federal Bureau of Investigation as General Counsel and then later he became Chief of Staff at the FBI for Director Mueller.

Based on his distinguished career, in 2004, Mr. Wainstein was appointed to serve as interim United States Attorney for the District of Columbia. On October 7, 2005, he was unanimously confirmed by the Senate to this position.

In my view, Mr. Kenneth Wainstein's vast experience in a number of areas at the Department of Justice clearly gives him a breadth of knowledge that will serve him well in the National Security Division.

I look forward to reviewing the Committee's deliberations on this nominee and look forward to the full Senate's consideration as well.

**NOMINATIONS OF ANDREW J. GUILFORD, OF
CALIFORNIA, TO BE DISTRICT JUDGE FOR
THE CENTRAL DISTRICT OF CALIFORNIA;
AND FRANK D. WHITNEY, OF NORTH CARO-
LINA, TO BE DISTRICT JUDGE FOR THE
WESTERN DISTRICT OF NORTH CAROLINA**

WEDNESDAY, MAY 24, 2006

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:03 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Lindsey Graham presiding.

Present: Senator Graham.

**OPENING STATEMENT OF HON. LINDSEY O. GRAHAM, A U.S.
SENATOR FROM THE STATE OF SOUTH CAROLINA**

Senator GRAHAM. The hearing will now come to order, a few minutes late, and the Chair recognizes my two friends, colleagues, distinguished Senators from North Carolina, and ladies first.

**PRESENTATION OF FRANK D. WHITNEY, NOMINEE TO BE DIS-
TRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH
CAROLINA, BY HON. ELIZABETH DOLE, A U.S. SENATOR
FROM THE STATE OF NORTH CAROLINA**

Senator DOLE. Thank you, Mr. Chairman, and I want to thank you for holding today's hearing. It is my great honor to introduce Frank DeArmon Whitney, the President's nominee to serve as a U.S. district judge in the Western District of North Carolina. Mr. Whitney brings an impressive record of accomplishment and achievement before this committee, and he is an outstanding choice for this important post.

Frank Whitney has deep roots in North Carolina and in public service. He attended Wake Forest University and the business and law schools at the University of North Carolina at Chapel Hill. After receiving his law degree with honors, Frank clerked on the prestigious U.S. Court of Appeals for the District of Columbia Circuit for Hon. David Sentelle, a favorite son of North Carolina, and it is a privilege to have Judge Sentelle with us today.

Upon completing his clerkship and a year in private law practice, Frank returned to North Carolina and dedicated himself to public service. For nearly 11 years, he served as an Assistant U.S. Attor-

ney for the Western District of North Carolina. While in the Western District, he acquired substantial trial experience, both criminal and civil, and earned the respect of his colleagues and peers.

In 2002, Frank was elevated to the post of U.S. Attorney for the Eastern District of North Carolina. As a result of his leadership, energy, and enthusiasm, the Eastern District has experienced a period of robust and resounding success. Among his many accomplishments, Frank Whitney has supervised what some have called "the most successful public corruption prosecution in North Carolina history." He also has helped prepare Iraqis for the process of drafting a constitution and establishing a judicial system.

He has even recovered North Carolina's original copy of the U.S. Bill of Rights, which was stolen from the State Capitol in 1865.

Senator GRAHAM. Stolen?

Senator DOLE. His performance as U.S. Attorney has elicited high praise. The Raleigh News and Observer credited Frank Whitney for awaking elected officials to the importance of ethics in Government, and the newspaper attributed his incredible success to his restless mental and physical energy and Boy Scout idealism.

Others who have had the opportunity to observe Frank's work have described him as aggressive yet fair. Those who know Frank best, including those who have worked for him in the U.S. Attorney's Office, are effusive in their support for his nomination.

One of Frank's colleagues made the following assessment: "Frank is personable and gracious, yet knows the law and seeks justice. He has an abiding love for our country and is deeply committed to the principles that have made it great. He appreciates the historic separation of powers and understands judicial self-restraint. Frank possesses vast legal knowledge and demonstrates admirable judicial temperament."

Mr. Chairman, this description is consistent with everything that I know about Frank Whitney, and I submit that this is precisely the type of person we need on our Federal courts.

I have spoken mainly of Frank's service for this country as its representative in court. But there is another component of his career that I must commend. That is his impressive record of military service, which began during his collegiate days at Wake Forest where he participated in ROTC. Frank is present a Lieutenant Colonel in the U.S. Army Reserves, and he has worked as an intelligence officer and as a judge advocate. He has been awarded numerous military honors, including a parachutist badge and three meritorious service medals.

Mr. Chairman, Frank Whitney truly has dedicated his life to serving his country as a civilian and as a soldier. Frank comes to this Committee with impeccable credentials, and I am confident that he would serve with great distinction as a member of the Federal judiciary. It is my privilege to give him my strongest endorsement.

Thank you again for holding a hearing for this distinguished North Carolinian and public servant. I hope that this Committee will act with due speed on his nomination and that I soon will have the opportunity to cast a vote for his confirmation on the Senate floor.

Thank you very much.

Senator GRAHAM. Thank you, Senator Dole. You can preach my funeral. That was pretty good.

Senator DOLE. All right.

[Laughter.]

Senator GRAHAM. You have got a lot to live up to, Frank, when you come up here. Well done.

Senator Burr?

PRESENTATION OF FRANK D. WHITNEY, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA, BY HON. RICHARD BURR, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator BURR. Mr. Chairman, Senator Dole makes it very difficult to go second, and I forgot to say that it is an honor to be asked to speak on behalf of Frank Whitney to be a United States District Court Judge in the Western District of North Carolina.

I saw the Chairman's eyes light up as Senator Dole talked about his military service, and I think in many ways it mirrors that of the Chairman. I am not sure who ranks higher, but I am sure we will find out before this hearing is over.

[Laughter.]

Senator BURR. Clearly, Frank's academic and professional credentials are quite impressive. He is currently U.S. Attorney in my home State. He has practiced in two very distinguished law firms. He was an Assistant U.S. Attorney. He has clerked in the D.C. District Court of Appeals. He graduated with honors from law school at UNC-Chapel Hill. And he was Phi Beta Kappa from my alma mater, Wake Forest. That should be enough right there just to put him on the bench.

But I think Senator Dole put it best, that this is an incredibly impressive resume, and now you have to add to it that his most honorable characteristic is that he continued to do this while he served his country. He continues to serve in the Army Reserve, both as an intelligence officer and a judge advocate. He is a former paratrooper and received three meritorious service medals and recently was selected for promotion to Lieutenant Colonel, so I have a feeling you probably do outrank him.

I could continue with the list of qualifications, but I think it is clear that this is a man that is well qualified to join the other fine Federal judges who currently preside in our State of North Carolina.

But, Mr. Chairman, I think the most important qualification that I would like to note about Frank Whitney is he is a good man. I had the pleasure of meeting Frank and his family this morning when they visited my office—his wife Catherine, his daughter Hunter, and other family members. And I think that you will have the opportunity to meet them as well.

Personally, as a husband and a father, I want to feel confident that the individuals that we extend a lifetime appointment to represent the things that I as a husband and a father think are important. Frank Whitney meets that goal.

I feel confident that Frank does understand the importance of being a Federal judge. I know that Frank is qualified to serve on the bench. I am confident that Frank will continue to serve his Na-

tion with honor and dignity. I believe Frank will continue to make his family proud, and I am 100-percent confident today that North Carolina will have one of the best Federal judges in the country in Frank Whitney.

Mr. Chairman, I urge you and your colleagues to move his nomination as quickly to the floor out of Committee as we possibly can so that a State that has a number of vacancies today can begin tomorrow to fill those vacancies. And I thank the Chair.

Senator GRAHAM. Well, I want to thank both of my colleagues from North Carolina for, one, picking someone like this. This is what makes the law so well respected in our society. The law is well respected because we have good judges, good prosecutors, good defense attorneys, and you have hit a home run here. I appreciate both of you for not only picking someone that represents your State well but would represent our whole Nation well wearing the robe. And I promise you we will get this done very quickly.

Thank you both.

Senator GRAHAM. All right. If you both would please raise your right hand. Do you solemnly swear the testimony you are about to give before this hearing is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GUILFORD. I do.

Mr. WHITNEY. I do.

Senator GRAHAM. Maybe a good way to start is for each of you just to introduce your families, if you don't mind.

STATEMENT OF ANDREW J. GUILFORD, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

Mr. GUILFORD. Thank you, Mr. Chairman. I am honored to be here. I appreciate the opportunity to introduce my family. Is that better? Thank you. I'm glad I got that on before I had this unique opportunity.

Obviously, I am honored to receive the nomination. I'd like to thank you, Mr. Chairman, for having this hearing and for the good work that you and this Committee does. I would like to thank the President, of course, for nominating me and in the State of California, Senators Boxer and Dorr—Senators Boxer and Feinstein have an advisory committee. I'm pleased with the advice that they've given that has brought me here.

Someone who is not here are my mother and father, Howard and Elsie Guilford, who have been married now for over 60 years. They were unable to come, but I did—I am blessed with a lot of people who were able to come.

Let me first start with the Brusseau family, neighbors from the area: Judith Brusseau, please stand up. Charlotte Brusseau, Catherine Brusseau, and Rebecca Brusseau. Thank you all for coming.

Next is my brother, who has been a JAG officer, a career JAG officer, which seems to be a popular career here today: Jeff Guilford. Thank you for coming, Jeff.

Then my family over here, first my daughter, Amanda Murray, who is in a Ph.D. program at the University of Iowa. Her husband could not come because he is working on his Ph.D. program from Iowa. My daughter, Colleen Guilford, who in a few weeks will grad-

uate from Harvard Law School. We are very proud of her. And last, but not least, my friend and wife for 32 years, Loreen Guilford.

Senator GRAHAM. We welcome you all.

Mr. GUILFORD. Thank you, Mr. Chairman.

[The biographical information of Andrew J. Guilford follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Andrew "Andy" John Guilford

2. Address: List current place of residence and office address(es).

Residence:
Trabuco Canyon, CA

Andrew J. Guilford, Esquire
Sheppard Mullin Richter & Hampton
650 Town Center Drive, 4th Floor
Costa Mesa, CA 92626

3. Date and place of birth.

November 28, 1950 at Santa Monica, California

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married for 32 years to Loreen Mary Guilford (nee Gogain), homemaker

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

UCLA School of Law	9/72 to 6/75	J.D. (6/75)
UCLA	9/68 to 6/72	A.B., Summa Cum Laude (6/72)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

6/75 to date	Sheppard, Mullin, Richter & Hampton - associate and partner
6/74 to 9/74	Dolman Kaplan Neiter & Hart - summer clerk
2/74 to 9/74	Professor Jesse Dukeminier - research clerk
3/74 to 6/74	Justice Lester Roth - research clerk
6/73 to 6/74	Murray Colloran & Brill - research clerk
5/69 to 9/72	Sears Roebuck & Company - sales clerk
1/72 to 6/73	Santa Monica Department of Parks and Recreation - recreation aide

1996 to 2000	State Bar of California - Board of Governors and President
1988 to 1991	Orange County Bar Association - Board of Directors and President
2001 to date	Federal Bar Association - Board of Directors
1997 to 2001	Association of Business Trial Lawyers of Orange County - Board of Directors and President
1989 to date	Public Law Center - Board of Directors and President
Around 1985	Constitutional Rights Foundation - Board of Directors
Around 1992-1995	UCLA Law Alumni Association - Board of Directors
Around 1991-1995	Baroque Music Festival - Board of Directors
Around 2000	The National Conference of Christians and Jews - Board of Directors

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I have not served in the military.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Fellow, American College of Trial Lawyers; Fellow, American Bar Foundation; A.B. Summa Cum Laude; Phi Beta Kappa; U.C. Regents Scholar; Pi Gamma Mu; Lawrence E. Irell Alumni Scholarship; Crescent Bay Exchange Club Scholarship

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American College of Trial Lawyers

Southern California State Committee; Access to Justice Committee

State Bar of California

1999-2000 President

1996-2000 Board of Governors

Chair, State Bar MJP Task Force; Commission on the Future of the State Bar; Calendar Coordinating Committee; Chair, OCBA State Bar Delegation; State Bar Conference of Delegates

Orange County Bar Association

1991 President

1988-1992 Executive Committee

1988-1990 Secretary, Treasurer, and President-Elect

1985-1988 Board of Directors

Chair, Delay Reduction Committee; Chair, Long Range Planning Committee; Chair, Bylaws Committee; Chair, Business Litigation Section; Federal Courts Committee; Minority Issues Committee; Gender Equity Committee; Pro Bono Committee; Ethics

Committee; Arbitration Administrative Committee; Judiciary Committee; Committee on the Administration of Justice Legislative Committee; Law and Motion Committee; and the Judicial Liaison Committee

Federal Bar Activities

2001-date Board of Directors
Magistrate Judge Merit Reappointment Panel; Attorney Admissions Fund Board;
Magistrate Judge Merit Selection Panel; Ninth Circuit Judicial Conference Delegate;
Central District Standing Committee on Discipline

Association of Business Trial Lawyers of Orange County

2000-2001 President
1997-2000 Treasurer, Secretary, and Vice President
1997 Founding Officer

Other Bar Association Activities

Los Angeles County Bar Association; American Bar Association; Association of Business Trial Lawyers; Robert A. Banyard Inn of Court; Legion Lex Inn of Court; Supreme Court's Advisory Task Force on Multi-Jurisdictional Practice; Judicial Council's Task Force on Self-Represented Litigants; Judicial Council Courthouse Advising Committee; Fellow, American Bar Foundation

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Aside from the State Bar, I do not now believe I am involved in organizations that are active in lobbying. Other organizations not previously listed in this Questionnaire to which I belong follow:

The Episcopal Church - Vestry, Warden, Lay Eucharistic Minister

The Coto de Caza Golf and Racquet Club

Daniel's Inn

Churchill Society

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

I was admitted to the following courts on the dates shown:

California Supreme Court

12/18/75

Supreme Court of the United States	5/14/79
United States District Court for the Central District of California	1/6/76
United States District Court for the Southern District of California	4/22/81
United States District Court for the Northern District of California	1990
United States District Court for the Eastern District of California	1990

There are no lapses in membership.

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Mocking Juries (California Litigation, Volume 18, Spring 2005)
 Letter on Unpublished Opinions (Daily Journal, March 31, 2004)
 Writing Right (Brain) (Daily Journal, March 4, 2005)
 Federal Frolics (California Litigation, Volume 14, Winter 2002)
 Game of Risk (Daily Journal, November 19, 2001)
 A Brief for an Independent Judiciary (Orange County Register)
 Letter: Judge Acted Responsibly (Orange County Register, March 4, 1997)
 Letter on D-Day (Time Magazine, June 27, 1994)
 Letter on Princess Di (Newsweek Magazine, September 29, 1997)
 Letter: Mourn Diana But Recognize Greatness (Orange County Register)
 Letter: Where Was the Coverage? (Orange County Register, June 3, 1996)
 TV's 'L.A. Law' Frequently Out of Order
 Maury Wills, Hall of Fame Shortstop (Internet Page, <http://www.maurywills.com/halloffame.htm>)
 1001 Points of Light (President's Page)
 The Home Court Advantage (President's Page)
 A County of Many Colors (President's Page)
 Proud to be an American Litigator (President's Page)
 The Search for Truth (President's Page)
 The Bar's Reform Continues (President's Page)
 A Column for History (President's Page)
 Reciprocity Reform: The Future is Now (President's Page)
 For Our System to Work, We Need to be Involved (President's Page)
 Professionalism or Profits (President's Page)
 Link Starting Salaries With Service (President's Page)
 Resurrecting Cliché-Ridden Values (President's Page)
 The State Bar of California: Under New Management (President's Page)
 Barbs for the Bar from the Bard (President's Page)
 The Truth, the Whole Truth, and Nothing But the Truth (President's Page)
 Good Night and Thank You Whoever (President's Page)
 Installation Speech (October 1999)

Alternatives to Litigation (Newspapers, June 1988)
 Justice for Sale (Business to Business, May 1988)
 The Economics of Inheritance and Its Restrictions, 22 UCLA L. Rev. 903 (1975)

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. My last physical examination was on October 19, 2005.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held a judicial office.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I was elected to serve on the State Bar Board of Governors from 1996 through 1999. I was elected to serve as President of the State Bar of California for the 1999-2000 term.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Since 1975, I have practiced, primarily as a business trial attorney, with the attorneys of Sheppard Mullin Richter & Hampton now at 650 Town Center Drive, Fourth Floor, Costa Mesa, CA 92626.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

On graduating from law school and joining Sheppard, Mullin, Richter & Hampton, I spent a year or so rotating through the Labor and Banking & Finance Departments at the firm. Since then, I have been a business trial attorney, representing individuals, corporations, and other business entities. I represent both plaintiffs and defendants. My trials are generally rather long, usually ranging from two weeks to a month or more. My cases have involved a wide variety of subjects, ranging from banking law to real estate to professional liability and, particularly recently, intellectual property issues. In addition, I have occasionally served as a paid arbitrator.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My typical client is a corporation needing a business trial attorney. Banks and intellectual property companies have predominated as clients. I have specialized in trial work.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Throughout my career, I have appeared in court frequently.

2. What percentage of these appearances was in:

- (a) federal courts: 45%
- (b) state courts of record: 45%
- (c) other courts: 10%

3. What percentage of your litigation was:

- (a) civil: 95%
- (b) criminal: 5%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I estimate that I have tried over 25 cases to verdicts. My trials generally are long, but I aim to try at least one case per year. I was associate counsel in two such cases, sole counsel in about 25% of such cases, and lead counsel in the remainder of such cases.

5. What percentage of these trials was:
 - (a) jury: 60%
 - (b) non-jury: 40%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

- A. National Commercial Recovery, Inc. v. Community Dental Services, Inc., dba Smilecare Dental Group, Orange County Superior Court Case No. 73 46 28

Opposing and Other Counsel:

David Casselman, Wasserman, Camden et al., 5567 Reseda Boulevard, Suite 300, Tarzana, CA 91356, (818) 705-6800

Alan D. Wener, 847 North Hollywood Way, Suite 201, Burbank, CA 91505-2826, (818) 840-8108

Sylvia C. Cruz, 300 S. Spring Street, #1502, Los Angeles, CA 90012, (213) 897-5267.

Judge: The Honorable James P. Gray

Substance of Case: In and about 1996, I represented State Compensation Insurance

Fund in this case against it for bad faith insurance practices where the jury was asked to award many millions of dollars. After a long trial beginning on October 21, 1996, the jury returned a defense verdict and judgment was filed on January 7, 1997, which was affirmed by the Fourth Appellate District, Division Three, Case No. G021348.

- B. Smithkline Beecham v. Smithkline Diagnostics, Inc., United States District Court, Eastern District of Pennsylvania Case No. 96-CV-5569

Opposing Counsel: Roberta Jacobs-Meadway, Ballard, Spahr, et al., 1735 Market Street, 51st Floor, Philadelphia, PA 19103-7599, (215) 864-8201

Co-Counsel: Albert G. Bixler, Eckert, Seamans, Cherin & Mellott, 1515 Market Street, Ninth Floor, Philadelphia PA 19102 (215) 851-8412

Judge: The Honorable Charles R. Weiner

Substance of Case: In and about 1997, I represented Smithkline Diagnostics, Inc., which was sued in this case for trademark infringement. On September 23, 1997, a court trial was commenced in the United States District Court for the Eastern District of Pennsylvania. After argument and witness examination, a resolution was reached.

- C. Bandai America Corporation v. Bullet Freight Systems, Inc., Los Angeles Superior Court Case No. BC 162242

Opposing Counsel: Miles L. Kavaller, 15915 Ventura Boulevard, Suite 201, Encino, CA 91436-5741, (818) 728-4821; and Allan A. Sheno of Graham & James, 801 South Figueroa Street, Suite 1400, Los Angeles, CA 90017-5554, (213) 624-2500; and Laurie L. Levenson of Loyola Law School, 919 South Albany, Los Angeles, CA 90015-0019, (213) 736-1000

Co-Counsel: John C. Russell, 74040 Highway 111, Suite J, Palm Desert, CA 92260, (760) 837-9083 and Anthony A. De Corso, Beck, De Corso, Daly et al., 601 West Fifth Street, 12th Floor, Los Angeles, CA, (213) 688-1198

Judge: The Honorable Sherman W. Smith, JAMS, 350 South Figueroa Street, Suite 990, Los Angeles, CA 90071, (213) 620-1000

Substance of Case: In and about 1998, I represented the defendant shipping company in this matter in which the plaintiff claimed that my client over billed for shipping the Power Ranger toy. Serious criminal issues were raised in the case. A jury trial began on August 24, 1998, and judgment was entered against my client on November 9, 1998. I was lead counsel at trial, assisted by our co-counsel, John Russell and Anthony De Corso.

- D. Meruelo v. Ross Towers LLC, Marcus & Millichap Real Estate Investment Brokerage Company, etc., Orange County Superior Court Case No. 786907

Co-Counsel: William H. G. Norman of Cooper, White & Cooper, 201 California Street, 17th Floor, San Francisco, CA 94111, (415) 433-1900

Opposing and Other Counsel:

Bruce A. Broillet, Green, Broillet, Taylor, Wheeler & Panish, 100 Wilshire Boulevard, 21st Floor, Santa Monica, CA 90401, (310) 576-1200
 Laurence P. Nokes, Nokes, Davis & Quinn, 450 Ocean Avenue, Laguna Beach, CA 92651, (949) 376-3055

Judge: The Honorable Thierry Colaw

Substance of Case: In and about 1999, I was associate counsel in this case, assisting William Norman in the jury trial against our client Marcus & Millichap Real Estate Investment Brokerage Company for breach of its fiduciary duties. Trial began in the summer of 1999, and plaintiffs counsel Bruce Broillet obtained a judgment on September 7, 1999 in favor of his client. I assisted with the appeal, and succeeded in reversing the judgment at the Fourth Appellate District, Division Three, Case No. G026423

- E. Miller v. O'Melveny & Myers, etc., Orange County Superior Court Case No. 77 73 49

Opposing Counsel: Robert K. Sall, Sall & Smolowitz, 32351 Coast Highway, Laguna Beach, CA 92651-6703, (949) 499-2942

Other Counsel: Todd E. Gordinier, Stradling Yocca, et al., 660 Newport Center Drive, Suite 1600, Newport Beach, California 92660, (949) 725-4000

Judge: The Honorable Robert W. Parkin

Mediator: David A. Rotman of Gregorio, Haldeman & Piazza, 625 Market Street, Suite 400, San Francisco, CA 94105, (415) 543-3366

Substance of Case: In and about 2001, I defended a major law firm and two of its partners in this malpractice action against my clients and another major law firm. I was sole counsel. After an extensive mediation before David Rotman, a settlement was reached on February 3, 2001.

- F. National Loan Investors, L.P., v. Reginald Jackson, United States District Court, Central District of California, Case No. SA CV96 - 963 - LHM (Eex) (appealed to Ninth Circuit as Case No. 97-55128); also includes Orange County Superior Court Case No. 72 74 47

Judges: The Honorable Linda H. McLaughlin, and The Honorable Francisco Firmat

Mediator: For a portion of the case, the mediator was The Honorable John K. Trotter, JAMS, 500 North State College Boulevard, Suite 600, Orange CA 92868, (714) 939-1300

Opposing Counsel: Jeffrey E. Thomas, formerly of Oswald & Yap, then at 16148 Sand Canyon, Irvine, CA 92618, (949) 450-1180; and Kenneth P Scholtz, formerly of Quan, Cohen, et al., then at 2821 Anchor Avenue, Los Angeles, CA 90064, (310) 837-9640; and Adam M. Greely, Galfin & Passon, 18101 Von Karman Avenue, Suite 1400,

Irvine, CA 92612-1043, (949) 752-2444

Substance of Case: In the 1990's I represented Reggie Jackson in this litigation in which the plaintiff originally sought a loan repayment from Mr. Jackson, who filed a cross-complaint about the way the loan had been handled. The case was removed to Federal Court and remanded back to State Court, with an appeal to the Ninth Circuit filed in December 1996 in the process. I was sole counsel. Portions of the case were settled over time, with Mr. Jackson receiving a check on February 23, 1998. The case is somewhat related to Reginald M. Jackson v. Harmon Killebrew, United States District Court, Central District of California Case No. SA MISC 631, in which a writ of execution was issued by the Court of The Honorable Gary L. Taylor on November 21, 1991 to recover on a judgment received in the case of Reginald M. Jackson v. Harmon Killebrew, United States District Court, Northern District of California Case No. C 884591 - DLJ, which led to the bankruptcy of Mr. Killebrew, In the matter of Harmon Clayton Killebrew, United States Bankruptcy Court, District of Arizona, Phoenix Division, Case No. 92-00794-PHX-GBN.

- G. Newport-Mesa Unified School District v. Wells Fargo Bank, Orange County Superior Court Case No. 70 12 07; also includes In Re: Stephen A. Wagner, Linda S. Wagner, Debtors-in-Possession United States Bankruptcy Court, Central District of California Santa Ana Division, Case No. SA 92-18339 JR, Adversary No. SA 93-1434 JR

Opposing Counsel: Spencer E. Covert, Jr., and Clayton H. Parker, Parker & Covert, 17862 East 17th Street, Suite 204, East Building, Tustin, CA 92680, (714) 573-0900

Judge: The Honorable Richard J. Beacom and The Honorable John E. Ryan
Mediator: The Honorable Bruce W. Sumner, JAMS, 500 North State College Boulevard, Suite 600, Orange CA 92868, (714) 939-1300

Substance of Case: In and about 1993, I represented Wells Fargo Bank in this matter in which the plaintiff school district sought to recover from the bank for allegedly honoring fraudulent checks in a scheme by school district employee, Stephen Wagner. The matter also involved dealing with Wagner's bankruptcy. The case between the school district and the bank was settled in December 1993, and the bank obtained a judgment against Wagner in the bankruptcy court around July 1994.

- H. Waln-Barclay Company v. Larsen, Los Angeles Superior Court Case No. C710868

Opposing Counsel: Hayward J. Kaiser, Mitchell, Silberberg & Knupp, 11377 West Olympic Boulevard, CA 90064, (310) 312-3134

Judge: The Honorable Philip Jones

Substance of Case: In and about 1990, I represented Waln-Barclay Company. This jury trial started on August 3, 1990 with my plaintiff client seeking relief, particularly specific performance, concerning the sale of a large parcel of real estate to my client. As the trial progressed over many weeks, the real estate market dropped substantially. The trial concluded with the judge refusing to grant specific performance.

I. Obarr v. Security Pacific National Bank, Orange County Superior Court Case No. 386276

Opposing Counsel: Arthur N. Hews (deceased) and Timothy J. Swift, Hews, Munoz, Swift & Thamer, 315 West Third Street, Santa Ana, CA 92701, (714) 541-4331

Trial Judge: The Honorable Lloyd E. Blanpied, Jr. (deceased)

Substance of Case: In and about 1986, I represented the defendant trustee bank in this case. The plaintiff alleged that the defendant trustee breached its fiduciary duty by simultaneously representing the interests of the landlord and tenant of a large piece of real property. Since the case involved a breach of trust, the case was tried to the court with an advisory jury. Although the advisory jury recommended compensatory damages of \$4.4 million and punitive damages of \$48 million, I obtained a defense verdict from the judge, sitting as trier of fact, on September 5, 1986.

J. Smith v. City of Santa Ana, United States District Court, Central District of California, No. SACV04-00084 JFW (PJWx)

Opposing and Other Counsel:

Dean J. Zipser, Carole Reagan, Linda Sampson, Adina Witzling, Morrison & Foerster LLP, 19900 MacArthur Boulevard, 12th Floor, Irvine, CA 92612-2445, (949) 251-7500;

Stuart Jasper, Jasper & Jasper, 19800 MacArthur Boulevard, Suite 860, Irvine, CA 92612-2445, (949) 756-1560;

Wylie A. Aitken, Darren O. Aitken & Cohn, 3 Imperial Promenade, # 800, Santa Ana, CA 92707-5903, (714) 434-1424;

Michelle A. Reinglass, Law Offices of Michelle Reinglass, 23161 Mill Creek Drive, Suite 170, Laguna Hills, CA 92653-1694, (949) 587-0460;

Deborah Mallgrave, Snell & Wilmer LLP, 600 Anton Blvd., Suite 1400, Costa Mesa, CA 92626, (714) 427-7000;

Thomas R. Malcolm, Mark D. Kemple, William J. Brown, Jr., Jones Day, 3 Park Plaza, Suite 1100, Irvine, CA 92614-8502, (949) 851-3939;

Gregory N. Weiler, Patrick A. Hennessey, Michael H. Leifer, Palmieri, Tyler, Wiener, Wilhelm & Waldron LLP, 2603 Main Street, Suite 1300, Irvine, CA 92614-6228, (949) 851-9400;

Brett J. Williamson, Marcus S. Quintanilla, Melanie J. Triebel, Katrina M. Robson, O'Melveny & Myers LLP, 114 Pacifica, Suite 100, Irvine, CA 92618-3318, (949) 760-9600;

Andra Barmash Greene, Michael R. Williams, Irell & Manella LLP, 840 Newport Center Drive, Suite 400, Newport Beach, CA 92660, (949) 760-0991;

Randall L. Erickson, Christina Johnson, Crowell & Moring LLP, 3 Park Plaza, Suite 2000, Irvine, CA 92614-7203, (949) 263-8400;

Federico C. Sayre, Mark S. Brown, Law Offices of Federico C. Sayre, 900 North Broadway, Fourth Floor, Santa Ana, CA 92701-3466, (714) 550-9117;]

Ronald Rus, Joel S. Miliband, Catherine Castaldi, Rus Miliband & Smith, 2600 Michelson Drive, Seventh Floor, Irvine, CA 92612-1550, (949) 752-7100;

Jose Sandoval, City of Santa Ana, Office of the City Attorney, 20 Civic Center Plaza, P.O. Box 1988, Santa Ana, CA 92702, (714) 647-5201;

Peter W. Ezzell, Jules S. Zeman, Kevin Osterberg, Nancy Lucas, Haight, Brown & Bonesteel, 6080 Center Drive, Suite 800, Los Angeles, CA 90045, (310) 215-7100.

Trial Judge: For most of the case, The Honorable Gary L. Taylor

Substance of Case: In and about 2005, I represented on a *pro bono* basis clients asserting that their religious rights were infringed by the defendant city restricting their ability to feed the poor. On September 21, 2005, the matter was settled.

- K. Cottonwood Christian Center v. Cypress Redevelopment Agency, United States District Court, Central District of California, Case No. SACV 02-60 DOC (Anx), 218 F.Supp.2d 1203 (C.D. Cal. 2002)

Opposing and Other Counsel:

Michael D. Rubin, Rutan & Tucker LLP, 611 Anton Blvd., Suite 1400, Costa Mesa, CA 92628-1931, (714) 641-5100; Kevin J. Hasson, The Becket Fund, 1350 Connecticut Ave., NW, Suite 605, Washington, D.C. 20036, (202) 955-0099.

Judge: The Honorable David O. Carter

Substance of Case: In and about 2002, I represented the plaintiff church seeking to enjoin the defendant city's eminent domain condemnation proceedings. The plaintiff claimed among other items that its freedom of religion was violated and that its property was being taken without just compensation. The court granted a preliminary injunction.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Beyond the litigated matters described in response to Question 18, I have been involved in many legal activities intended to improve the judicial system and provide access to justice. Some examples follow.

President, State Bar of California

I served as president of this very large, mandatory bar association at an important time of transition for the association in 1999-2000. Following on the good work of prior presidents, I believe I succeeded in my primary goals which included restructuring our governance systems, and focusing on our core function of promoting ethical professionalism.

Continuing Legal Education

I frequently participate in continuing legal education programs conducted by organizations such as The Rutter Group, C.E.B., and Inns of Court. The programs generally focus on ethics and litigation.

California Supreme Court's Advisory Task Force on Multi-Jurisdictional Practice ("MJP")

During my year as president of our state bar, I promoted reform of our MJP rules. The Chief Justice of the California Supreme Court appointed me to this Task Force which succeeded in amending our MJP rules under the leadership of our chair, Ray Marshall.

Judicial Council's Task Force on Self-Represented Litigants

The Chief Justice of the California Supreme Court appointed me to this Task Force which is now implementing programs that provide access to justice for citizens of modest means under the leadership of our chair, Kathleen O'Leary.

President, Orange County Bar Association

I served as president of this large, voluntary bar association in 1991. I worked on getting a new federal courthouse and ABA-approved law schools in Orange County, as well as other issues relating to ethics and access to justice.

Arbitrator and Mediator and Judge Pro Tempore

During my career as a trial attorney, I have also served on occasion as a mediator, arbitrator, and judge pro tempore for our local court. Some of my assignments have come through the American Arbitration Association. Most of my assignments have come simply from practitioners asking me serve as an arbitrator or mediator, or from a judge asking me to serve as a judge pro tempore. These opportunities have provided valuable opportunities for me to learn the skills needed by a judge.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None, aside from my law firm's retirement plan, and my interest in my law firm valued at \$85,000 which will be paid to me when I leave the law firm.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Should I be confirmed, potential conflicts during my initial service include cases involving my former firm, former clients, or as a result of my financial holdings. In all circumstances, I will follow the letter and spirit of the Code of Conduct for United States Judges and all applicable statutes, policies, and procedures.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See financial disclosure report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No, aside from occasionally making campaign donations.

AO-10 (WP)
Rev. 1/2004FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 2004Report Required by the Ethics
in Government Act of 1978,
(5 U.S.C. App. §§101-111)

1. Person Reporting (Last name, first, middle initial) Guilford, Andrew J.		2. Court or Organization U.S. District Court, Central District of California		3. Date of Report January 30, 2006	
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Court - Nominee		5. Report Type (check appropriate) XX Nomination, Date 1/25/06		6. Reporting Period 1/1/2005 to 12/31/2005	
7. Chambers or Office Address 650 Town Center Drive, 4 th Floor Costa Mesa, CA 92626		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Initial _____ Annual _____ Final _____ Reviewing Officer _____ Date _____			
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.					

I. POSITIONS. (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Partner	Sheppard, Mullin, Richter & Hampton, LLP
2 Board Member	Federal Bar Association, Orange County Chapter
3 President	Public Law Center

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 2004 - 2005	Sheppard, Mullin Richter & Hampton, LLP, retirement benefits, no control
2 2004 - 2005	Sheppard, Mullin Richter & Hampton, LLP, partnership interest

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME
A. Filer's Non-Investment Income		
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 2004	Sheppard, Mullin Richter & Hampton, LLP, partnership income for legal services	\$ 718,591
2 2005	Sheppard, Mullin Richter & Hampton, LLP, partnership income for legal services	\$ 746,320
3 2006	Sheppard, Mullin Richter & Hampton, LLP, partnership income for legal services	\$ 10,558

B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)

<input checked="" type="checkbox"/> NONE (No reportable non-investment income.)	
1	
2	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Guilford, Andrew J.	Date of Report January 30, 2006
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IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1		EXEMPT
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE (No such reportable gifts.)		
1		EXEMPT	\$
2			\$
3			\$
4			\$

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
<input checked="" type="checkbox"/>	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			

*Value Codes: J=\$15,000 or less N=\$250,001-\$500,000	K=\$15,001-\$50,000 O=\$500,001-\$1,000,000	L=\$50,001-\$100,000 P1=\$1,000,001-\$5,000,000	M=\$100,001-\$250,000
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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Guilford, Andrew J.

Date of Report

January 30, 2006

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

[illegible]

1	Income/Gain Codes: (See Col. B1, D4) B=\$15,001-\$50,000 C=\$50,001-\$100,000 D=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=More than \$5,000,000	A=\$1,000 or less E=\$15,001-\$50,000 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000	B=\$1,001-\$2,500 I=\$1,000,001-\$5,000,000	C=\$2,501-\$5,000 J=\$5,001-\$100,000 K=\$100,001-\$500,000 L=\$500,001-\$1,000,000 M=\$1,000,001-\$5,000,000 P1=\$5,000,001-\$5,000,000 P2=More than \$5,000,000	D=\$5,001-\$15,000 N=\$15,001-\$50,000 O=\$50,001-\$100,000 P=\$100,001-\$500,000 Q=\$500,001-\$1,000,000 R=\$1,000,001-\$5,000,000 S=More than \$5,000,000
2	See Method Codes (See Col. C1, D3)	Q=Other (real estate only) R=Other (non-real estate only) S=Assessment T=Cash/Market			
3	Value Method Codes (See Col. C2)	Q=Other (real estate only) R=Other (non-real estate only) S=Assessment T=Cash/Market			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Guilford, Andrew J.	January 30, 2006

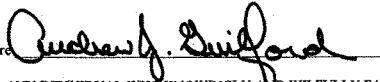
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date

JAN. 30, 2006

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
 Administrative Office of the
 United States Courts
 Suite 2-301
 One Columbus Circle, N.E.
 Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		200	000	Notes payable to banks-secured		564	000
U.S. Government securities-add schedule		196	000	Notes payable to banks-unsecured			
Listed securities-add schedule		835	000	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule	1	250	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		250	000				
Cash value-life insurance		13	000				
Other assets itemize:							
Partnership Value		85	000				
Partnership Cash Balance Plan		100	000				
				Total liabilities		564	000
				Net Worth	2	365	000
000 Total Assets	2	929	000	Total liabilities and net worth	2	929	000
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT**NET WORTH SCHEDULES****U.S. Government Securities**

American Funds US Govt Secur A	\$196,00
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Listed Securities

DWS Dreman Small Cap Fund A	\$55,000
American Fund Inv Co Amer A	53,000
Dreyfus S & P 500 Index Fund	53,000
Dodge & Cox Balanced Fund	52,000
American Funds Bond Fund A	198,000
American Funds Cash Mgmt Trust	400,000
Bank of America	6,000
Walt Disney	4,000
Wells Fargo & Co	14,000
Total Listed Securities	<hr/> \$835,000

Real Estate Owned

Personal residence	\$850,000
Vacation property	400,000
Total Real Estate Owned	<hr/> \$1,250,000

Real Estate Mortgages Payable

Personal residence	\$564,000
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III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have been very active in providing and promoting free legal services to non-profit organizations, indigent individuals, and others. This has been one of my primary goals in my positions of bar leadership. I have led my firm's efforts for pro bono services. I have provided speeches and articles on this matter.

I also feel it is important that I personally provide indigent legal representation. I cannot recall any time during my years as a lawyer when I did not have active files representing indigents. Sometimes, this work has involved trials, such as the case of Stewart v. Ensor, dba Alans Medical Products, Orange County Superior Court Case No. C404820, in which The Honorable Greer H. Stroud awarded my client, Mr. Stewart, \$5,855 on July 7, 1993 for damages relating to a wheelchair scam. I estimate that this case required around 50 hours of my time, and I have had many such cases.

As further examples, I have represented abused women, a mother denied child support rights, and a pregnant woman against creditors. All cases I have handled such as these required around 50 hours of my time.

In the early 1990's, I was involved with assorted cases for the homeless of Santa Ana, which I estimate required over 100 hours of my time.

A recent significant pro bono case I worked on is the Smith v. City of Santa Ana case described above at Number 18J, which I estimate required over 100 hours.

I am proud of the awards I have received relating to my pro bono work, including the Poverty Law Center Distinguished Service Award for 1991, numerous Wiley W. Manuel Pro Bono Awards, and the State Bar President's Pro Bono Service Award for my work with significant homeless litigation in Orange County.

I often provide free legal services to non-profit organizations, and most of the work I do for indigents comes through the Public Law Center, 601 Civic Center Drive, Santa Ana, CA 92701, (714) 541-1010, where I have served on the board of directors since 1989 and recently served as president. Aside from the cases I take from the Public Law Center, I estimate that I have provided well over 1,000 hours of time assisting this organization.

Beyond directly providing free legal services to indigents, I have been involved in many other ways helping the disadvantaged, working through my church and many other groups on a regular basis. I note a few examples here. I have worked with orphanages in Tijuana, Mexico. I have worked in soup kitchens. I have worked with Habitat for Humanity. I have

delivered Christmas gifts to poor children through my church. I have sponsored a school classroom for indigent children.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I have never held membership in any organization that discriminates. In fact, as a member of the Gender Equity Committee, I led efforts to identify discriminating clubs, thus discouraging membership in such clubs.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes. In 2001, I applied to the Federal Judicial Advisory Committee for the Central District (sometimes called the "Parsky Commission"). I was interviewed by the Parsky Commission on August 27, 2001, February 12, 2002, and June 6, 2005. On October 30, 2001, I was interviewed by Counsel to the President Alberto Gonzales and members of his staff. On August 8, 2005, I was interviewed by staff of the White House Counsel office and the Department of Justice. After completing nomination paperwork and undergoing a background investigation, I was notified by the White House that my nomination would go forward. My nomination was sent to the Senate on January 25, 2006.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

In my interviews with the Parsky Commission, there have been general discussions about cases and legal issues.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the

subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Part of the genius of our Constitution and the government it created is the balance of power it established in numerous parts of our government. The most obvious is the balance of power between the three branches of government. There is also the balance of power between state and federal authorities. And of course, there is the balance of power the Constitution established between the desire of the majority expressed through elected officials, and the limited circumstances when specified rights are protected from the desires of a simple majority. Our courts and their judges have the difficult task of defining these balances of power.

Respecting the balances of power, a judge who honors the established principles of judicial decision making avoids judicial activism. The principles of justiciability provide proper limits on judicial power. One such principle is the "case or controversy" requirement arising from Article III, Section 2 of the Constitution which prevents a judge from giving advisory opinions. Related to this are the limitations resulting from the principles of standing, mootness, and ripeness.

Another principle limiting judicial power is that a judge should not rule on non-justiciable political questions. Still another limit on judicial power is found in the presumption of constitutionality, which places a proper burden on those seeking to strike down a statute. The principle of stare decisis is very important in limiting judicial power.

District judges must follow precedent. The principle of stare decisis not only limits judicial power, but also provides predictability, which is important in our modern society.

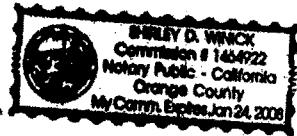
Overarching all, a judge should serve our country and its citizens with humility, living up to the oath to "support and defend the Constitution of the United States against all enemies, foreign and domestic, [and] bear true faith and allegiance to the same." A judge believing that his or her role is to humbly serve in supporting and defending the Constitution is not likely to improperly abuse power.

AFFIDAVIT

I, Andrew J. Guilford, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

FEB 21, 2006
(DATE)

Andrew J. Guilford
(NAME)



Shirley D. Winick
(NOTARY)

Senator GRAHAM. Thank you.
Mr. Whitney?

STATEMENT OF FRANK D. WHITNEY, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Mr. WHITNEY. Thank you, Mr. Chairman. It is my honor also to introduce my family, if I may. To my far right is my mother-in-law, Judy Ghoneim; my wife, Catherine; my daughter, Hunter. She's our 8-year-old. Our 10-year-old, Amy, is very disappointed because she's at home sick, and she wanted to be here today.

The next row is my colleague and close friend, Bobby Higdon from the Justice Department, who is joining us today. An old friend of mine and my wife's, Kim O'Brien. My legal mentor, Judge David B. Sentelle of the U.S. Court of Appeals for the D.C. Circuit. My cousin and close friend, David Whitney, who's former chief counsel for Senator Helms and is currently counsel on the House Judiciary Committee. And behind him, my nephew, Will Austin.

[The biographical information of Frank D. Whitney follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Frank DeArmon Whitney

2. **Address: List current place of residence and office address(es).**

Residences: Charlotte, North Carolina (Permanent);
Raleigh, North Carolina (Temporary)

Office: United States Attorney's Office
Terry Sanford Federal Building
310 New Bern Avenue, Suite 800
Raleigh, NC 27601

3. **Date and place of birth.**

November 22, 1959
Charlotte, North Carolina

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Married to Jillann Catherine Ghoneim
Kitchen designer
Self-employed d/b/a Kitchens,ink; 1308 Biltmore Drive; Charlotte, NC 28207
Affiliated with Cabinets By Design; 2914 Selwyn Avenue; Charlotte, NC 28209

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

University of North Carolina School of Law, 1983-1987, J.D. with Honors, 1987

University of North Carolina at Chapel Hill, 1983-1987, M.B.A., 1987

Wake Forest University, 1978-1982, B.A. *magna cum laude*, 1982

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

April 2002 -- Present; United States Attorney for the Eastern District of North Carolina

April 2001 – April 2002; Counsel; Kilpatrick Stockton, LLP

April 1990 – March 2001; Assistant United States Attorney; Office of the United States Attorney for the Western District of North Carolina

August 1989-March 1990; Associate; McKenna, Conner, & Cuneo

August 1988 – August 1989; Law Clerk; United States Court of Appeals for the District of Columbia, The Honorable David B. Sentelle

October 1987 – August 1988; Associate; McKenna, Conner, & Cuneo

1986; Summer Law Clerk; Maupin, Taylor, Ellis & Adams

1985; Summer Law Clerk, Office of General Counsel, Central Intelligence Agency

Summer 1984; Campaign staff member; Helms for Senate

April – August 1983; Intern/paralegal; Parham, Helms & Kellam

1976 – 1983; Part time sales representative; L. Whitney & Co.

1982 – Present; United States Army Reserve

1994 – Present, Managing Member, Whitney Properties, LLC

1998 - 2002, Board Member and former President, Historic Charlotte, Inc.

1998, Board Member and former President, Carolinas 2000, Inc.

1991 - 2002, Advisory Board, Mecklenburg County Council, Boy Scouts of America

1990 - 2002, Board Member and former President, Festival in the Park, Inc.

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

1982 – Present, United States Army Reserve, current rank is LTC (O-5).

Commissioned 1982, US Army Reserve, Distinguished Military Graduate from Wake Forest Army ROTC

Active Duty for Training, Sept 82 - Feb 83, US Army Intelligence Center and School, Graduated Commandant's List, Honorably Discharged from Active Duty and returned to Reserve Status

Army Reserve Military Intelligence Officer until 1993
Army Reserve JAG Officer, 1993 to present; Deputy Commander (LTC)

Temporary Tour of Active Duty in Support of Global War on Terror contingency issues,
March – May 2004

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Two U.S. Department of Justice Special Achievement Awards

Numerous awards and special recognition from various federal law enforcement agencies for service in the U.S. Attorney's Office

Four U.S. Army Achievement Medals, three U.S. Army Commendation Medals, and three U.S. Army Meritorious Service Medals (U.S. Army Reserve)

Board of Editors, N.C. Journal of International Law and Commercial Regulation

Distinguished Military Graduate (Wake Forest Army ROTC)

Phi Beta Kappa (Wake Forest University)

Eagle Scout

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

North Carolina Bar Association
Former Member American Bar Association
Federalist Society

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

To the best of my knowledge, the only organizations to which I belong that are active in lobbying before public bodies are:

National Sheriffs' Association
North Carolina Sheriffs' Association
Reserve Officers' Association
Association of the United States Army
National Rifle Association

Other organizations to which I belong, not listed previously in this questionnaire are:

North Carolina Association of Chiefs of Police
 North Carolina Narcotic Enforcement Officers Association
 International Narcotic Enforcement Officers Association
 Association of Former Intelligence Officers
 National Military Intelligence Association
 Army Judge Advocate General's Association
 Law Enforcement Association of America
 Myers Park Country Club

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

North Carolina State Bar (1987 to present)
 District of Columbia Bar (1988 to present; I voluntarily went on inactive status, but in good standing, 1993-2000 and 2002 to present)
 United States District Court for the District of Columbia (1988 to present)
 United States District Court for the Western District of North Carolina (1987 to present)
 United States District Court for the Middle District of North Carolina (2001 to present)
 United States District Court for the Western District of North Carolina (2002 to present)
 United States Court of Appeals for the Fourth Circuit (1990 to present)
 United States Court of Appeals for the District of Columbia Circuit (1988 to present)

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Co-author: FEDERAL MONEY LAUNDERING: CRIMES AND FORFEITURES, Lexis Law legal treatise (copyright 1999 with supplements).

Law School Note, Georgetown Steel v. United States: The Federal Circuit Addresses Countervailing Duties Against Nonmarket Economies, 12 N.C.J. Int'l L. & Com. Reg 202 (1987).

While I have given numerous CLE presentations on substantive law and procedure and given speeches on Justice Department initiatives (e.g., terrorism prevention, gun violence prevention, etc.), I have not given any speeches on constitutional law or legal policy. I have also prepared training materials on asset forfeiture, money laundering, corporate fraud, health care fraud and related subjects for Attorney General's Advocacy Institute, the North Carolina Bar Foundation, and related legal training organizations.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

I am in very good health. My last physical exam was December 2, 2005.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have held no judicial offices.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I have never been a judge.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

05/85 – 08/85, Law Clerk, Office of General Counsel, CIA

08/88- 08/89, Judicial Law Clerk to the Honorable David B. Sentelle, US Court of Appeals for the D.C. Circuit

03/90-03/01, Assistant United States Attorney for the Western District of North Carolina (appointed)

05/96-05/97, Charlotte-Mecklenburg Historic Landmarks Commission (volunteer-appointed)

04/02 to present, United States Attorney for the Eastern District of North Carolina (appointed)

17. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:
 1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period

you were a clerk;

Judicial Law Clerk to the Honorable David B. Sentelle,
U.S. Court of Appeals for the District of Columbia Circuit
(August 1988 to August 1989).

- 2. whether you practiced alone, and if so, the addresses and dates;**

I have never practiced alone.

- 3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

1987-1990, Associate
McKenna, Conner & Cuneo (now known as McKenna,
Aldridge & Long)
1575 Eye Street, NW
Washington, DC 20005

1990-2001, Assistant United States Attorney
United States Attorney's Office – Western District of North
Carolina
221 West Trade Street, Suite 1700
Charlotte, North Carolina 28201

2001-2002, Counsel
Kilpatrick Stockton LLP
One First Union Center, Suite 3500
Charlotte, North Carolina 28201

2002-Present, United States Attorney
Eastern District of North Carolina
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

My early years of practice substantially dealt with national security and intelligence law and classified and non-classified government contracts.

When I joined the United States Attorney's Office in 1990, my

practice evolved I initially handled civil and criminal forfeitures. I also handled all government contract matters, whether civil or criminal.

Since my work in Asset Forfeiture Unit required me to become well versed in both the federal money laundering and drug trafficking (controlled substances) laws, I was permitted to prosecute criminal money laundering and drug trafficking violations. Eventually, this led to my transfer in 1994 from the Asset Forfeiture Unit to the Presidential Organized Crime and Drug Enforcement Task Force (OCDETF), where I prosecuted criminal drug trafficking violations and handled criminal forfeitures related to drug trafficking. In addition to those responsibilities, during 1995 and 1996, I served as the Districts Computer and Telecommunications Crimes.

In late 1996 and early 1997, I transferred to the newly created position of Affirmative Civil Enforcement (ACE) attorney and Civil Health Care Fraud Coordinator where I investigated and prosecuted both civil and criminal health care fraud violations.

In April 2001, I joined the Litigation Practice Group in the Charlotte office of the firm Kilpatrick Stockton, LLP. There I handled commercial litigation work, forfeiture restitution work, white collar criminal defense matter, health care and anti-money laundering corporate compliance, and condemnation consulting /government relations work.

In April 2002, I was sworn in as the United States Attorney for the Eastern District of North Carolina. In that position, I have served as the chief federal law enforcement officer for the 44 eastern most counties in North Carolina.

In addition to the above, in 1993 I transferred in the US Army Reserve from the military intelligence corps to the Army Judge Advocate General Corps. As an Army Reserve Judge Advocate, I have served on numerous administrative discharge boards (most of them as a defense counsel); I have counseled hundreds of soldiers and dependents on family planning needs such as wills, powers of attorney, and related legal issues which could delay deployment of a soldier; I have advised unit commanders of disciplinary procedures under the Uniform Code of Military Justice; and generally provided other legal services as directed by my unit Commander.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

The vast majority of my clients have been federal agencies in criminal and civil prosecutions. My typical clients in private practice before I joined the US Attorney's Office (WDNC) in 1990 were large entities, primarily government contractors. During 2001-2002, I represented individuals, small businesses, and large businesses

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

During my eleven years as an Assistant United States Attorney, I frequently appeared in court. During my first six years, I appeared in court two or three times a week. After I became the Affirmative Civil Enforcement attorney, I did not appear in court as frequently, but I still probably made at least one appearance per month. As the United States Attorney, I appear in court occasionally.

2. What percentage of these appearances was in:

- | | | |
|-----|--------------------------------|------|
| (a) | federal courts: | 80 % |
| (b) | state courts of record: | 5 % |
| (c) | other courts: | 15 % |
- (primarily Army administrative boards)

3. What percentage of your litigation was:

- | | |
|---------------|------|
| (a) civil: | 40 % |
| (b) criminal: | 60 % |

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I estimate that I have taken thirty-five to forty matters to verdict or judgment before a jury or judge as trier of fact (including criminal cases, criminal forfeitures, civil/administrative forfeitures, military administrative boards before "panels," domestic violence injunctive hearings, and other matters). I estimate that I was sole counsel in 60% of those, lead counsel in 25% and "second chair" counsel in 15%.

5. What percentage of these trials was:

- (a) jury: 65%
 (b) non-jury: 35%

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
 (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
 (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

- 1) In re Certain Real Property Located at Lot 8, et al., 763 F. Supp. 150 (W.D.N.C. 1991); Chief Judge Robert D. Potter.

In this action I filed a lis pendens on real estate (rather than physically seizing the property) based on probable cause for forfeiture and the relation back doctrine, which vested title in the United States on the date of the property's illegal use, rather than the date of forfeiture judgment. One of the government's chief concerns was an innocent person unknowingly buying real property which the government was intending to seize for forfeiture. Opposing counsel moved to lift the lis pendens, claiming it placed an illegal cloud on title. I prepared all the governments pleadings and handled all hearings. The District court upheld the lis pendens under both Federal and North Carolina law. Because the opinion was precedent setting for civil forfeitures in rem, the Court published the opinion. Eventually the use of lis pendens rather than physical seizure of real property became the preferred policy of the Justice Department. In dicta in later Supreme Court opinions, the high Court recommended lis pendens rather than physical seizure, without surrendering "in rem" jurisdiction which was perceived to require physical custody. Eventually in the Civil Asset Forfeiture Reform Act of 2000, Congress codified the ability of the government to file a lis pendens to "seize" property.

Opposing counsel was Harold Bender, 200 N. McDowell Street, Charlotte, NC 28204 (704) 333-2169.

- 2) OPERATION CRACKPOT: United States v. Chambers, et al., 985 F.2d 1263 (4th Cir. 1993); United States v. Brown, et al., Nos. 93-5677 & 93-5862, 1994 U.S. App. LEXIS 17371 (4th Cir. July 15, 1994) (Table at 28 F.3d 1211, 1994

U.S. App. LEXIS 24681); Chief Judge Robert D. Potter.

I co-tried the first of these two serious drug conspiracy matters with another AUSA, and I was the sole prosecutor in the second of these matters. The investigation included numerous criminal prosecutions, civil and criminal forfeitures, witness protection coordination, appellate work, and substantial cooperation between local, state, and federal law enforcement agents. I handled both appeals. From a legal standpoint, the Chambers matter was significant because it held that a “manager” under the US Sentencing Guidelines could be a “property manager” without managing people; the precedent was so significant that eventually the Sentencing Commission re-wrote the guidelines in response to this holding to explicitly say a manager had to supervise people. Both matters were part of a large scale, two year long federal investigation (known as “Operation Crackpot”) that broke the back of one of the largest inner city cocaine and gambling conspiracy networks in North Carolina. Eventually over 80 people were prosecuted for drug trafficking, money laundering, and gambling.

Defense counsel in the Chambers matter were Daniel J. Clifton (301 S. McDowell Street, Charlotte, NC 28204 (704) 342-4044) and Dale S. Morrison (1043 E. Morehead Street, Charlotte, NC 28204 (704) 377-4700), and defense counsel in the Brown matter were James E. Gronquist (101 N. McDowell Street, Suite 126, Charlotte, NC 28204 (704) 347-1809) and George V. Laughrun, II (301 S. McDowell Street, Charlotte, NC 28204 (704) 372-2770.

- 3) United States v. Campbell, 977 F.2d 854 (4th Cir. 1992); Judge Graham C. Mullen.

Defendant was a licensed real estate agent who assisted in laundering \$60,000 in currency in a brown paper bag through a real estate closing. The Justice Department credited this as one of the earliest and most significant money laundering prosecutions in the country after enactment of the Money Laundering Control Act of 1986 because (1) the case was predicated on a “willful blindness” theory of knowledge of the proceeds of the underlying criminal activity and (2) the defendant had no involvement in the drug trafficking that generated the proceeds but was an otherwise legitimate real estate agent except for assisting in this laundering of drug money in this particular real estate closing. After the jury convicted the defendant of one count of laundering monetary instruments, one count of engaging in monetary instruments in criminally derived property, and one count of submitting false statements to HUD, the District Court granted post-verdict judgment of acquittal as to the convictions for the two money laundering counts and ordered a new trial.

On appeal, the Fourth Circuit re-instated the two money laundering convictions and wrote that the money laundering statutes do not require a businessperson to know the exact source of the proceeds, only know that the proceeds must come from “some form of unlawful activity.” The Fourth Circuit also affirmed the “willful blindness” theory of knowledge. The Fourth Circuit affirmed the District Court’s grant of a new trial. The case was remanded and settled with the defendant pleading to a currency reporting

requirement violation, another form of laundering when a trade or business handles in excess of \$10,000 in currency but fails to report it to the IRS.

Opposing counsel was James F. Wyatt, III, 435 E. Morehead Street, Charlotte, NC 28202 (704) 331-0767.

- 4) United States v. 1990 Chevrolet Silverado Pickup Truck, et al., 804 F. Supp. 777 (W.D.N.C. 1992), sub nom., United States v. Payne & 702 Union Road, Nos. 92-2430 & 92-2431 (4th Cir. June 21, 1993); Chief Judge Robert D. Potter.

This matter involved the civil forfeiture in rem of numerous assets involved in an illegal gambling business and money laundering. I supervised the underlying investigation and handled all aspects of the civil action, including both the district court proceedings and the appeal. Claimant Jerry Coleman Payne alleged that the property was not subject to forfeiture because the government lacked sufficient evidence for forfeiture. The government prevailed in summary judgment against claimant, presenting substantial verified evidence of the properties' connection to criminal conduct and also showing that claimant had failed to show he had standing, despite the fact that one of the properties was his residence. In the motion for summary judgment which I drafted and filed, I laid out in detail the law on civil forfeiture and on standing to contest a civil forfeiture.

The District Court used my brief as a guideline for summarizing civil forfeiture in its decision. Because the opinion was thorough and set out civil forfeiture law so succinctly, the District Court published the decision, which remained good law in the District until 2000, when Congress enacted the Civil Asset Forfeiture Reform Act and amended the burdens of the government in civil forfeitures.

Claimant Payne appealed to the Fourth Circuit. In an unpublished decision, the Fourth Circuit affirmed the District Court, virtually re-stating the law which the District Court had laid out in its opinion.

Opposing Counsel was W. Robinson Deaton, Jr., 402 East Graham Street, PO Box 458, Shelby, NC 28150.

- 5) United States v. Boulter, No. 93-5220, No. 93-5522, 1994 U.S. App. LEXIS 7808, (4th Cir. April 18, 1994) (Table at 21 F.3d 425, 1994 U.S App. LEXIS 15837); United States v. \$57,000, No. 92-1817 (4th Cir. April 18, 1994) (Table at 21 F.3d 425, 1994 U.S. App. LEXIS 15838).

These two cases were part of one federal investigation of a previously convicted drug dealer who was suspected of smuggling cocaine from south Florida and Texas to North Carolina. The case involved both criminal prosecution and numerous seizures and forfeitures of assets. I supervised the civil seizures and forfeitures and co-chaired the criminal trial. I also drafted both appellate briefs and argued the forfeiture matter on appeal. The defendant was convicted at trial of money laundering and possession of a

firearm by a convicted felon but was acquitted of drug conspiracy. He also had to criminally forfeit a substantial number of assets.

The criminal trial and criminal forfeiture were before Judge Robert D. Potter. The civil forfeiture action was before Judge Graham C. Mullen, who actually ordered the release of \$57,000, but was reversed on appeal by the Fourth Circuit.

Opposing counsel was James F. Wyatt t, III, 435 E. Morehead Street, Charlotte, NC 28202 (704) 331-0767.

- 6) United States v. 100 Chadwick Drive, Kings Mountain, North Carolina, et al., 913 F. Supp. 430 (W.D.N.C. 1995); Judge Robert D Potter.

This was a precedent setting case involving the constitutional issues of double jeopardy and excessive fines in civil forfeiture actions. Claimant Ronald H. Wellman, who was also criminally charged with drug conspiracy, contended that his real property could not be forfeited in addition to criminal conviction because he would effectively be prosecuted twice and the forfeiture would be unconstitutionally excessive. I handled the forfeiture for the government, preparing all the civil pleadings and the responses to Wellman's arguments. In a detailed analysis of the Supreme Court precedent on the Eighth Amendment, I explained that civil forfeitures traditionally were remedial in nature, not punitive, therefore, a civil forfeiture of property involved in drug trafficking did not violate any provision of the Eighth Amendment. The District Court concurred, adopting the reasoning in the government's brief, and published the decision since it was precedential. For the most part, the decision remains good law.

Opposing counsel was Richard A. Culler, 301 S. McDowell Street, Suite 807, Charlotte, NC 28204, (704) 347-5030.

- 7) United States v. Massias, No. 96-4577, 1997 U.S. App. LEXIS 12464 (4th Cir. May 30, 1997) (Table at 114 F.3d 1178, 1997 U.S. App. LEXIS 20592); Judge Thomas A. Wiseman, Jr.

I was the only attorney who tried defendant Massias, appealed his sentence and prevailed, and defended his conviction and re-sentence on a subsequent appeal. The evidence showed that defendant Massias was violent drug trafficker and an enforcer or gun man. He was involved in a drug conspiracy which would import powder cocaine from the New York/Pennsylvania area to North Carolina, then supervise the cooking of the powder into "crack" – a highly dangerous hardened and nearly purified form of cocaine. Defendant was targeted by the federal authorities because he assisted in the "occupation" of an inner city motel which inner-quad had turned into a virtual shooting gallery between competing drug gangs. Defendant is now serving a sentence of 324 months.

Opposing counsel in various phases of this matter included James J. Exum, 301 S. McDowell Street, Charlotte, NC 28204 (704) 334-5583, and Terry Rose (now moved;

former address -- 725 East Trade Street, Suite 110, Charlotte, NC 28204).

- 8) United States v. Leak, No. 99-4722, 2000 U.S. App. LEXIS 23565; 86 A.F.T.R.2d (RIA) 6242 (4th Cir. September 20, 2000) (Table at 2000 U.S. App. LEXIS 30947).

After a United States Department of Justice trial attorney had tried this tax evasion case, resulting in a jury verdict of guilty for most of the tax evasion charges, the District Court granted the defendant's post-verdict judgment of acquittal and ordered a new trial.

Because I had handled the civil forfeitures related to this case and was well versed with the facts, I handled the government's appeal of the District Court's post-verdict acquittal. Since the case was a classic "net worth" tax matter, it was complex and relied on a substantial amount of documentary evidence. I also argued the case before the Fourth Circuit. The Fourth Circuit reversed the District Court and re-instated the verdict.

Opposing counsel was Michael S. Scofield, 212 S. Tryon Street, Suite 1280, Charlotte, NC 28281, (704) 331-9348.

- 9) United States v. Angle, et al, 230 F.3d 113 (4th Cir. 2000), aff'd in part and vacated in part, 254 F.3d 514 (4th Cir. 2001) (en banc).

I tried this case and handled the initial appeal; the Solicitor General's office handled the en banc appeal (which involved the maximum length of the sentence, a new issue arising from the Supreme Court's Apprendi decision). This multi-defendant case was tried before the Honorable Richard Voorhees.

Defendant Corey Angle and co-defendant James Edward Phifer a/k/a Rick Daye were two drug kingpins in Statesville, North Carolina, supplying a substantial amount of the wholesale powder cocaine to the streets of Statesville. The local authorities had literally spent years investigating the two of them but had failed successfully to prosecute them. Local prosecutors focused on single "buys" by undercover officers and did not have the resources to build a complex "historical conspiracy" drug case. The DEA provided investigative resources, and I provided money laundering and tax experience to build "financial" case against the defendants. At a two week long trial, defendants Corey Angle and Phifer were convicted; another defendant, John Henry Angle, was acquitted. On appeal, both convictions were affirmed. Because of the Apprendi decision, the sentencings of both defendants were initially vacated and order re-sentenced. Ultimately, both defendants received lengthy sentences – one for twenty years and the other nearly twenty years in length.

Primary opposing counsel was James F. Wyatt, III, 435 E. Morehead Street, Charlotte, NC 28202 (704) 331-0767, and Calvin E. Murphy, 101 N. McDowell Street, Suite 210, Charlotte, NC 28204.

- 10) United States ex rel Phillips v. Pediatric Services of America, et al., 123 F. Supp. 2d 990 (W.D.N.C. 2000); Senior Judge Robert D. Potter.

This was a federal False Claims Act matter filed by realtor Linda Gail Phillips against defendant-healthcare providers. As the Civil Health Care Fraud Coordinator for the District, I reviewed the merits of this case and recommended to the Department of Justice and the United States Attorney that the government not intervene because the alleged dollar losses were modest but retain the right to re-intervene. Based on my recommendation, the government did not initially intervene but retained the right to intervene.

In the meantime, the Supreme Court handed down United States ex rel. Stevens v. Vermont Agency of Natural Resources, 529 U.S. 765 (2000), raising in dicta some issues questioning the constitutionality of a qui tam action where a third party sues on behalf of the United States.

Relying on Stevens, defendant-healthcare providers filed several constitutional challenges against the False Claims Act, itself, and not the merits of the particular case. The government re-intervened to defend the constitutionality of the Act. I prepared all the government's pleadings and handled the matter exclusively. The government won every single constitutional challenge. The decision was so important in protecting the False Claims Act that the District Court published the decision to set precedent. The precedent still stands today. After this favorable result, the government returned to its original status, declining to handle the merits of the case, but allowing the case to continue by the realtor.

Realtor's counsel was Thomas D. Roberts, 20 Battery Park Ave, Asheville, NC 28801, (828) 252-0602.

Defendants-healthcare providers' counsel were Isaac N. Northup, Northrup & McConnell, PLLC, 123 Biltmore Avenue Asheville, NC 28801, (828) 232-4481; W. Bradford Searson, 366 Merrimon Avenue, Asheville, NC 28801, (828) 252-1786; and Dale A. Curridan, 11 North Market Street, P.O. Box 7376, Asheville, North Carolina 28802-7376, (828) 258-2991.

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

As United States Attorney for the Eastern District of North Carolina, I have served more in a managerial capacity and also have pursued significant legal activities including the following.

The most significant of those legal activities was the recovery of North Carolina's original copy of the Bill of Rights in April of 2003. In 1789, President George Washington directed Congress to pen fourteen original copies of the Bill of Rights – one copy for the United States and one each for the original thirteen states. In 1865, a rogue soldier stole North Carolina's original copy of the Bill of Rights and absconded with it to Ohio, selling it to a gentleman from Indianapolis whose family retained custody of the document for the next 135 years. In the late 1990s, the family quietly began to market the Bill of Rights, genuinely believing they had legitimate title to the document. Less sincere investors, knowing that title was in question, purchased the Bill of Rights for from the family and then surreptitiously began to market the document for millions of dollars to other possible investors, including the State of North Carolina. The North Carolina Attorney General's office contacted me as the United States Attorney, asking for the federal government's assistance in recovering the document. Within one week of that contact, after a model example of cooperation among state and federal authorities, we were able to recover the Bill of Rights in an undercover FBI operation. In August 2005, the United States government through the United States Attorney Office delivered the Bill of Rights to the Governor of North Carolina in a ceremony in the State Capitol Building – the same building from which it was stolen 140 years before in 1865.

Also as United States Attorney, I have supervised aggressive public corruption prosecutions involving public officials in eastern North Carolina. Although I have not personally prosecuted the cases, I have substantially participated in the cases because of their public policy significance. Two of the more important public corruption cases involved felonious conduct by the elected State Agriculture Commissioner, who committed campaign finance fraud and extortion, and by a sitting Congressman who had committed fraud and embezzlement while a State Senator. The prosecution of the State Agriculture Commissioner was deemed by the local media as one of the most effective public corruption prosecutions in North Carolina history.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

I have a small 401(k) account through my former law firm, Kilpatrick Stockton LLP, which is fully vested. I have no financial relationship or deferred income arrangements with my former law firm, although the law firm does chose the brokerage firm which manages the 401(k) account.

I also have a Thrift Savings Plan (TSP) with the federal government, which is also fully vested. I intend to leave my TSP account with the federal government and will receive benefits under the provisions of that program.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

I do not anticipate any conflicts of interest since, if I am confirmed, I will be serving in a District different from the District in which I am now practicing as a prosecutor. I will watch carefully in all cases for an actual or potential conflict of interest or where there is a reasonable appearance of a conflict. In all circumstances, I will follow the Code of Conduct for United States Judges and all applicable statutes, policies and procedures.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain**

I do not have any such plans, commitments or agreements. Also, I currently serve in the US Army Reserve. It is my understanding, that if confirmed I will either have to retire from the Army Reserve or transfer to a Title 32 status in the National Guard. I will take whatever steps are necessary to comply with law and regulation

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here)**

See attached Financial Disclosure Report

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached Net Worth Statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

Intern (paid position), Helms for Senate 1984 (helped organize campaign events around state and set up Charlotte campaign office)

General volunteer in various campaigns (making phone calls, stuffing envelopes, get out the vote, fundraising calls, etc.):

Dole for Senate 2002 (until being sworn in as US Attorney)
 Bush/Cheney 2000
 Helms for Senate 1998
 Dole for President 1996
 Myrick for Congress 1994, 1996, 1998, & 2000
 Bush for President 1988
 Reagan/Bush 1984
 Bill Cobey for Congress 1982, 1984
 Reagan/Bush 1980
 East for Senate 1980
 Helms for Senate 1978

Public Affairs Chairman (Volunteer), Mecklenburg Republican Party, 1997 – 1999, and
 General Chairman (Volunteer), Mecklenburg Republican Party, 1999-2001.

AO-10 Rev. 1/2004		FINANCIAL DISCLOSURE REPORT NOMINATION FILING		Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)
1. Person Reporting (Last name, First name, Middle initial) Whitney, Frank D		2. Court or Organization USDC-WDNC		3. Date of Report 2/17/2006
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee		5. Report Type (check appropriate type) <input checked="" type="radio"/> Nomination Date 2/14/2006 <input type="radio"/> Initial <input type="radio"/> Annual <input type="radio"/> Final		6. Reporting Period 1/1/2005 to 2/17/2006
7. Chambers or Office Address United States Attorney's Off 310 New Bern Ave, Suite 800 Raleigh, NC 27601		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.				

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ **NONE** - (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Lieutenant Colonel	US Army Reserve
2. Member	Whitney Properties, LLC

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ **NONE** - (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 2001	Kilpatrick Stockton, LLP, 401(k) retirement program -- no control

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Whitney, Frank D	Date of Report 2/17/2006
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III. NON-INVESTMENT INCOME. (Reporting individual and spouse, see pp. 17-24 of filing instructions)**A. Filer's Non-Investment Income**☒ **NONE** - (No reportable non-investment income.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)☐ **NONE** - (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2005	Self-employed, kitchen designer, net earnings
2. 2006	Self-employed, kitchen designer, net earnings

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ **NONE** - (No such reportable reimbursements.)

SOURCE	DESCRIPTION
1. _____	EXEMPT
2. _____	_____

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Whitney, Frank D	Date of Report 2/17/2006
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V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)☐ **NONE** - (No such reportable gifts.)

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. <u>EXEMPT</u>		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)☐ **NONE** - (No reportable liabilities.)

<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1. Bank of America	Loan on Rental Property # 1, Davidson, North Carolina (Part VII, Line 1)	L
2. Bank of America	Loan on Rental Property # 1, Charlotte, North Carolina (Part VII, Line 2)	M
3. Judy Ghoneim (relative)	Loan on Rental Property # 1, Charlotte, North Carolina (Part VII, Line 2)	K
4. Bank of America	Loan on Rental Property # 1, Sunset Beach, North Carolina (Part VII, Line 4)	N
5. Heirs of Joe B. Spivey and Leola F. Spivey	Loan on Rental Property # 2 & # 3, Sunset Beach, North Carolina (Part VII, Lines 5 & 6)	L
6. Bank of America	Loan on Rental Property # 2, Charlotte, North Carolina (Part VII, Line 7)	K
7. Bank of America	Loan on Rental Property # 3, Charlotte, North Carolina (Part VII, Line 8)	K
8. Bank of America	Loan on Rental Property # 4, Charlotte, North Carolina (Part VII, Line 9)	K
9. Bank of America	Loan on Rental Property # 2, Davidson, North Carolina (Part VII, Line 10)	L

FINANCIAL DISCLOSURE REPORT**Page 1 of 2**Name of Person Reporting
Whitney, Frank DDate of Report
2/17/2006**VII. INVESTMENTS and TRUSTS** — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Amount Code 1 (A-I)	Type (e.g. div. rent or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-I)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1. Rental Property #1, Davidson, North Carolina	D	Rent	M	W	Exempt				
2. Rental Property #1, Charlotte, North Carolina	D	Rent	N	W					
3. Whitney Properties, LLC	C	Distribution	O	W					
4. Rental Property #1, Sunset Beach, North Carolina	E	Rent	O	W					
5. Rental Property #2, Sunset Beach, North Carolina	E	Rent	O	W					
6. Rental Property #3, Sunset Beach, North Carolina	E	Rent	O	W					
7. Rental Property #2, Charlotte, North Carolina	D	Rent	N	W					
8. Rental Property #3, Charlotte, North Carolina	D	Rent	L	W					
9. Bank of America business banking accounts (Whit Prop)	B	Interest	K	T					
10. Carolina Panthers Permanent Seat License	A	None	J	W					
11. Co-author book, Lexis-Nexis, Newark, NJ (no inc since 2002)	A	Royalty	J	W					
12. Banc of America Investment Security Money Manager Acc	A	Interest	J	T					
13. Bank of America individual savings and checking accounts	A	Interest	J	T					
14. Scottish Bank Common Stock, Charlotte, NC	A	Dividend	J	T					
15. Belk Corp Common Stock, Charlotte, NC	A	Dividend	J	T					
16. General Electric Common Stock	A	Dividend							
17. Merck & Co., Inc. Common Stock	A	Dividend							
18. Banc of America Investment Sec Vanguard Index Trust S&P 500	D	Dividend	M	T					

FINANCIAL DISCLOSURE REPORT**Page 2 of 2**

Name of Person Reporting

Whitney, Frank D

Date of Report

2/17/2006

VII. INVESTMENTS and TRUSTS — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-I)	(2) Type (e.g. div. rent or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-I)	(5) Identity of buyer/seller (if private transaction)
19. Microsoft Common Stock	A	Dividend			Exempt				
20. Duke Energy Common Stock	A	Dividend							
21. Proctor & Gamble Co Common Stock	A	Dividend							
22. Reliant Energy Common Stock	A	Dividend							
23. Pepsico Inc Common Stock	A	Dividend							
24. BB&T Equity Index Fund	B	Dividend	K	T					
25. Fidelity Advance Growth & Income	A	Dividend							
26. Scudder Dremen High Return Equity Fund	A	Dividend							
27. Bank of America Common Stock	A	Dividend							
28. General Electric Common Stock	A	Dividend							
29. Microsoft Corp Common Stock	A	Dividend							
30. Merck & Co, Inc. Common Stock	A	Dividend							
31. Fidelity Dividend Growth	B	Dividend	K	T					
32. Standard & Poors DEP RCPTS (SPY)	D	Dividend							
33. US Payroll Savings Bonds	B	None	J	T					
34. Promissory Note Receivable from Paul A. Citron	A	None	J	T					

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Whitney, Frank D	Date of Report 2/17/2006
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

III. Filer's non-investment income is for current employment by the United States government.

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Whitney, Frank D	Date of Report 2/17/2006
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IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature



Date

2/17/2006

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		14	000	Notes payable to banks-secured			
U.S. Government securities-add schedule		1	200	Notes payable to banks-unsecured			
Listed securities-add schedule		86	145	Notes payable to relatives			
Unlisted securities--add schedule		9	811	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful		3	500	Real estate mortgages payable-add schedule		690	712
Real estate owned-add schedule	1	904	535	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		42	500				
Cash value-life insurance							
Other assets itemize:							
Deferred compensation / Retirement accounts (see attached schedule)		352	869				
				Total liabilities		690	712
				Net Worth	1	723	848
Total Assets	2	414	560	Total liabilities and net worth	2	414	560
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		548	858	Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT**NET WORTH SCHEDULES**U.S. Government Securities

Series EE Bonds	\$1,200
-----------------	---------

Listed Securities

Securities are held as UTMA accounts in:
Fidelity Growth, S&P fund, and BB& T equity
Index fund.

Total Listed Securities	\$ 86,145
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Unlisted Securities

Scottish Bank	\$ 8,566
Belk Corp	1,245

Total Unlisted Securities	\$ 9,811
---------------------------	----------

Real Estate Owned

Personal residence	\$ 927,500
Rental Property 1	226,000
Rental Property 2	200,000
25% interest in family property LLC net holdings	551,035

Total Real Estate Owned	\$ 1,904,535
-------------------------	--------------

Other Assets

Vanguard 401(k)	\$ 194,315
Fidelity 401(k)	11,953
TSP Accounts	81,636
IRA Accounts	64,965

Total Other Assets	\$ 352,869
--------------------	------------

Real Estate Mortgages Payable

Personal residence	\$ 506,416
Rental Property 1	134,677
Rental Property 2	49,619

Total Real Estate Mortgages Payable	\$ 690,712
-------------------------------------	------------

Contingent Liabilities (endorser, co-maker or guarantor): \$548,858

This is the total value of the family property LLC mortgage liability. I have a 25% interest in the company.

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

I have actively participated in pro bono projects, both while serving as an Assistant United States Attorney and in private practice. The area of pro bono service which has lead me to court the most is assisting battered spouses/significant others in seeking restraining orders against the other spouse/significant other. I have taken two of these matters to a factual hearing before a judge sitting as trier of fact and prevailed in both hearings.

I have also assisted an indigent mother in protecting her leasehold rights against the local public housing authority who would to evict her because her former before had stored drugs in her apartment without her knowledge. Although I did not take this matter over until after the public housing authority sought a motion for reconsideration, we prevailed and she continued to have leasehold rights.

I have been involved in two legal services projects to draft, review, and supervise the execution of wills, powers of attorney, and health care powers of attorney for indigent and elderly individuals. The program, known as "Wills on Wheels," has been highly praised by the local legal services chapter in the piedmont region of North Carolina.

I have also helped incorporate and file for IRC § 501(c)(3) status two charitable organizations, the Sue Myrick Foundation (created to raise money for victims and families stricken by breast cancer and to raise money for veterans in financial need) and the Charlotte World War II Memorial Foundation (created to raise money to fund and endow a statute paying tribute to veterans of World War II). I also provided some assistance in the early stages of another non-profit entity, the Jemsek Foundation (a charitable organization to financially assist the treatment of indigent HIV patients in North Carolina).

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

To the best of my knowledge, no organization that I am a member of or was a member of has invidiously discriminated.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

While there is no judicial selection commission in my jurisdiction, I went through a lengthy selection process. I was interviewed by the staffs of both Senators Elizabeth Dole and Richard Burr and met or communicated directly with both senators. Upon the Senators' joint recommendation to the President, I was interviewed by staff from the Office of White House Counsel and the Department of Justice. I completed all required paperwork and a background investigation was conducted. On February 14, 2006, the President submitted my nomination to the United States Senate.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this judicial activism have been said to include:

- a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight**

responsibilities.

Governed by the Constitution, statute, and precedent, it is my belief that the judiciary is to arbitrate and adjudicate actual cases and controversies. American constitutional history shows ebbs and flows between the powers of the two political branches – periods of a strong executive, periods of a strong legislature, and periods of relatively equal branches. The judiciary is to serve as the arbitrator between the two political branches, applying the written law and protecting the ability of the political branches to give and take. A judicial officer's discretion is limited both by precedent and stare decisis and by the presumption of constitutionality of statutes, particularly since all statutes have gone through bi-cameral legislation and approval by the President.

AFFIDAVIT

I, FRANK DEARMON WHITNEY, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

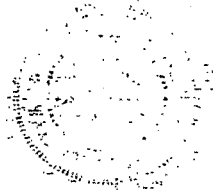
3/6/06
(DATE)

Frank DeArmon Whitney
(NAME)

Linda H. Hayes
(NOTARY)

N.C. / Wake Co.

Expires : 6/24/08



Senator GRAHAM. Well, thank you. Welcome to you all, and particularly, Judge Sentelle, welcome to you. We really appreciate you coming and taking time from your duties to be here to support Frank.

We will make this short and to the point, but we will start with you, Mr. Whitney. One of the great debates we have been having in the Senate is who should be a judge and why and how much does philosophy matter and what is the role of a judge, and is a conservative politician and a conservative judge the same thing, or a liberal politician and a liberal judge, are they the same thing? I don't think so, but if you could give me just a real brief explanation of what you believe your judicial philosophy is and how you see your job as a district court judge in terms of that philosophy.

Mr. WHITNEY. Thank you, Senator. That's a very thoughtful question.

This morning, my wife, daughter, and mother-in-law decided to do a little tour of Capitol Hill, and we walked down the street to the Library of Congress. On the way we stopped in front of the Supreme Court building, and I looked up over the colonnade and I saw the phrase, "Equal Justice Under the Law." And I don't think anything more summarizes the importance of what district judges do. They ensure that all men and women are treated equally under the law. And I pledge to follow the law, adhere to the law, if confirmed, and apply equal justice under the law.

Senator GRAHAM. How do you think your military service has helped you, if at all, for this job?

Mr. WHITNEY. Thank you for allowing me to share my thoughts on that. My military service is more beneficial to me than any other legal service because, as a judge advocate—and you know this, and I believe you do outrank me. I believe you are an O6 Colonel.

Senator GRAHAM. Only in rank, not in—

[Laughter.]

Mr. WHITNEY. Thank you.

Senator GRAHAM. Thank God the two don't go together.

[Laughter.]

Senator GRAHAM. I would have been in trouble a long time ago.

Mr. WHITNEY. As you know, judge advocates deal with soldiers and dependents, with people. And my experience in private practice or in public practice, civilian public practice, has either been with businesses or representing the people of the United States. As a judge advocate, though, I represented soldiers' and dependents' personal needs, individual needs, and it really touched me how important it is that we are dealing with people. And as a judicial officer, I think I will be able to perform with an understanding that it is individuals that their lives we're dealing with as we make rulings on the law.

Senator GRAHAM. Thank you.

Mr. Guilford, how would you describe your judicial philosophy? And how will it be applied to the job that awaits you?

Mr. GUILFORD. Well, thank you for that interesting question, Mr. Chairman. I would agree with what Mr. Whitney has said. I would view the role of the judicial branch as being the branch that interprets the law and does not make the law, does not execute the law.

It's the branch that interprets the law. And I would hope to do that as the law is written. And I would hope to do it with humility. I think if we bring to the bench judges with humility, we will get the right kind of rulings.

Senator GRAHAM. Well, I just want to again thank you both for being willing to serve in this important job. I know you are not doing it for the money. I hope we can pay our judiciary a more appropriate rate because you do leave private practice on many occasions. The ability to make money is left behind for public service, and I want to make sure our judiciary is not only independent but that people with families, like you, who are not independently wealthy, can still serve. If you have a kid in Harvard, you probably know what I am talking about.

So it is very important to me that our judiciary be adequately compensated because people who are not independently wealthy with families can still financially be able to help our country. I look forward to supporting both of you, and congratulations to you and to your families, because there may be self-made men and women, I am just not one of them. If it weren't for people around me, my mentors, my family, and my friends, I would not be here. And I am sure it is the same for each of you. So congratulations. I hope you enjoy your time in Washington, and all of you should be rightfully proud of this moment because it was a team effort to get here. God bless.

Mr. GUILFORD. Thank you, Senator.

Mr. WHITNEY. Thank you, Senator.

Senator GRAHAM. The record will be left open for 1 week, and without any further input, the hearing is adjourned. Thank you.

[Whereupon, at 2:20 p.m., the Committee was adjourned.]

**NOMINATIONS OF JEROME A. HOLMES, OF
OKLAHOMA, TO BE CIRCUIT JUDGE FOR
THE TENTH CIRCUIT; DANIEL P. JORDAN
III, OF MISSISSIPPI, TO BE DISTRICT JUDGE
FOR THE SOUTHERN DISTRICT OF MIS-
SISSIPPI; AND GUSTAVO A. GELPI, OF PUER-
TO RICO, TO BE DISTRICT JUDGE FOR THE
DISTRICT OF PUERTO RICO**

THURSDAY, JUNE 15, 2006

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 2:03 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Tom Coburn, presiding.

Present: Senator Coburn.

**OPENING STATEMENT OF HON. TOM COBURN, A U.S. SENATOR
FROM THE STATE OF OKLAHOMA**

Senator COBURN. The Committee will come to order. Today, we will have a confirmation hearing for three of the President's judicial nominees. I appreciate your willingness to appear before the Committee today. Our nominees have traveled some distance, and we appreciate that.

I am particularly glad to see my friend, Mr. Holmes, a fellow Oklahoman here with us today. I hope we can quickly move all of your nominations through the Committee and get them voted on the floor as soon as possible.

Senator Leahy will not be able to attend. He does have a statement, which I will put into the record under unanimous consent agreement, as well as a statement from Senator Kennedy.

We have distinguished Members of Congress with us. Is Senator Cochran coming, Senator Lott?

Senator LOTT. I believe he is.

Senator COBURN. And Senator Inhofe will be here.

We will turn to our distinguished Members of Congress and allow them to introduce their nominees. First, we will start with Senator Lott.

**PRESENTATION OF DANIEL P. JORDAN III, NOMINEE TO BE
DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MIS-
SISSIPPI, BY HON. TRENT LOTT, A U.S. SENATOR FROM THE
STATE OF MISSISSIPPI**

Senator LOTT. Well, thank you very much, Mr. Chairman. It is a pleasure to call you Chairman, and it is such a delight also to realize that the Chairman of this Subcommittee chairing this hearing on the Judiciary Committee is not a lawyer.

Senator COBURN. I think four of us on the Committee are not lawyers.

Senator LOTT. That is a very positive development. But don't get carried away. We are not going to allow you on the Supreme Court.

Senator COBURN. I will not.

Senator LOTT. But thank you for having this hearing and allowing me to go forward. I know my senior colleague from Mississippi, Senator Cochran, will be here because he, like I, has known this family for at least 40 years, probably, and the young nominee that we are introducing today. So it is my great pleasure to introduce Daniel Jordan to the Committee. He is accompanied here by his wife, Teri—I want to recognize her—and, more importantly, his daughter, Anna; and his mother and father. Dan Jr. was president of the student body and the brigade commander of the Army ROTC unit when I was a freshman at the University of Mississippi in 1959, and he was one of those leaders on campus we all looked up to, and his wife, Lou—she was Smeltzer then—was Miss Ole Miss, which is the greatest honor you could possibly achieve in Mississippi, other than being Miss America. But this is a great, great family, and the senior Dan Jordan—I do not know the exact title, but for lack of a better—is it curator?

Mr. Jordan Jr. President of the Thomas Jefferson Foundation, which owns and operates Monticello.

Senator LOTT. Okay. He said it very well himself.

You will notice how young Lou looks, and, of course, the husband there is not quite that young looking, but he has done an outstanding job at Monticello. And if you have not ever been, go and let him take you on the night tour, where you can actually feel the spirit and almost blow out the candle of the tour from Thomas Jefferson. I think you would really enjoy it. He recently was selected as the Outstanding Citizen of the State of Virginia, and I think that is a great acknowledgment by Virginia that it would pick a Mississippian.

So we know the pedigree; we know the DNA of Dan Jordan. And we are very delighted that the President has seen fit to nominate him to the United States District Court for the Southern District of Mississippi.

In Mississippi, his nomination has received bipartisan and broad support and praise, and that is really significant because that has not always been the reaction of our nominees in Mississippi. But Dan has become a very respected litigator, and even those who oppose him in the courtroom—and maybe those who oppose him have the most respect for him because they appreciate his demeanor and the type of attorney he has become and the kind of individual he is. He is a graduate of the University of Mississippi cum laude and the University of Virginia Law School, where he was on the Edi-

torial Board of the Journal of Law and Politics. He is currently a partner with Butler, Snow, O'Mara, Stevens & Canada, the largest law firm based in Mississippi. In his practice, he has demonstrated the knowledge, professionalism, fairness, temperament, and skill that make him, I believe, ideally suited for the Federal bench.

He has a history of work in public service. Before attending law school, he gained experience working in the Department of Interior and later as a legislative aide for the then-freshman Senator from Mississippi, yours truly. And since returning to Mississippi, he has continued to serve the public through numerous philanthropic outlets.

He has served as the coordinator for the Jackson, Mississippi-based Stewpot Legal Clinic, an organization providing legal assistance to the homeless. His tireless efforts prompted the executive director of the Mississippi Volunteer Lawyers Project to recently proclaim of Dan in these words: "Words cannot express how he has given his time. He takes time out of his busy schedule to give back...He is just great."

He has been named one of Mississippi's "Top 40 under 40," although I believe he is over 40 now, by the Mississippi Business Journal and honored as "Jackson's Finest" by the Mississippi Multiple Sclerosis Foundation. He is an active member of the Christ United Methodist Church in Jackson and is the father of two.

He has the education, the experience, the reputation, and I think most importantly, the temperament to be an outstanding and fair judge. He is young, but he is wise and mature beyond his years. He is a perfect example of the kind of person that we need in the Federal judiciary, and so it is my great honor to be here to endorse the nomination and ask for the speedy confirmation of Dan Jordan of Mississippi to the Southern District of the Federal court.

Senator COBURN. Thank you, Senator Lott.

Next is my senior Senator, Senator Inhofe from Oklahoma. Senator Inhofe?

PRESENTATION OF JEROME A. HOLMES, NOMINEE TO BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT, BY HON. JAMES M. INHOFE, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator INHOFE. Thank you, Mr. Chairman. I apologize for being late. As you know, we have the Armed Services bill on the floor right now.

Well, I am here to endorse very heartily Jerome Holmes from Oklahoma. I cannot say enough good things about this guy. I have known him now for quite a number of years, and I have followed him. And, you know, it is not very often—and I think probably the two of us would fit in the category. It is hard to find someone that everybody likes. But everybody likes this guy. He has the temperament, he has the background, and the family background, to really appreciate what life in America is all about and what he should be doing in his public service.

His family is no stranger to serving the public. His father, Ryland Holmes, was in the Foreign Service, which took the family to places such as Ethiopia and Korea. Since I have an Ethiopian granddaughter, we have had some conversations about that. His mother, Hattie Holmes, was a public school teacher when they

lived overseas, and she was an administrator at the University of the District of Columbia when they returned to the United States.

He earned his law degree from Georgetown University in 1988 and his master's in public administration from Harvard University in 2000. He practiced law privately from 1991 to 1994 and was an Assistant U.S. Attorney for the Western District of Oklahoma. I believe that this distinguished service as Assistant U.S. Attorney helped him secure an impeccable reputation in the legal field. He was recently sworn in as the Vice President of the Oklahoma Bar Association and is currently director at one of Oklahoma's premier law firms, Crowe & Dunlevy.

He goes above and beyond the call of duty and is an active member of the Oklahoma Bar Association's Rules of Professional Conduct Committee and the Commission on the Homeless and Poverty of the American Bar Association. He also co-chairs the Crowe & Dunlevy Diversity Committee. He was a member of the Oklahoma City bombing prosecution team.

Not only has Jerome Holmes enjoyed a stellar professional career, but he has received numerous award for his service, including the Director's Award from the Executive Office of the U.S. Attorneys for superior service and many, many others that I will submit for the record.

I would like, though, to say that in addition to my recommendation, I have comments in letters from an abundance of people, but I would like to only mention one, Mr. Chairman, and that is a statement by the Tenth Circuit Judge William Holloway. He said, "I am pleased to recommend highly my former clerk, Jerome Holmes...He is dedicated to the highest standards of intellectual service and performed his work for our court as my clerk with complete impartiality and compassion for the people whose cases were before the court."

So I would say the same thing as Senator Lott said. I recommend his confirmation as soon as possible, and I can assure you that our judicial system will be better off with Jerome Holmes.

Thank you.

Senator COBURN. Thank you, Senator.

Next we have Representative Luis Fortuño of Puerto Rico. If you would, you are recognized for 5 minutes.

PRESENTATION OF GUSTAVO A. GELPI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF PUERTO RICO, BY HON. LUIS G. FORTUÑO, THE RESIDENT COMMISSIONER IN CONGRESS FROM THE COMMONWEALTH OF PUERTO RICO

Resident Commissioner FORTUÑO. Thank you, Mr. Chairman. As the sole Representative in Puerto Rico of the 4 million U.S. citizens residing in Puerto Rico, it gives me great pleasure to introduce U.S. Magistrate Judge Gustavo Gelpi to the Senate Judiciary Committee. On April 24, 2006, our President, George W. Bush, nominated him to fill a vacancy in the U.S. District Court for the District of Puerto Rico.

Mr. Chairman, I am honored to appear before you today in enthusiastic support of his nomination. Mr. Gelpi was born in San Juan, Puerto Rico, and educated at the Suffolk University Law School and Brandeis University, both in Massachusetts. Early in

his legal training, he worked as a student law clerk to U.S. Magistrate Judge Joyce L. Alexander and as a law clerk to U.S. District Judge Juan Perez-Gimenez. From 1993 to 1996, he worked in the office of the Federal Public Defender for the District of Puerto Rico as assistant Federal public defender. In 1996, Mr. Gelpi became Special Counsel for the United States Sentencing Commission in Washington, D.C. In 1997, he started working in the Puerto Rico Department of Justice, first as a special aide to the Attorney General and subsequently as Assistant Attorney General. In 1999, he continued his distinguished public service career by becoming the Solicitor General of Puerto Rico.

Since 2001, Magistrate Judge Gelpi has served with distinction as a U.S. Magistrate in the U.S. District Court for the District of Puerto Rico.

Magistrate Judge Gelpi has been actively involved in groups and committees dedicated to educating and improving the legal profession. He is a member of the Criminal Justice Act Committee, U.S. District Court for the District of Puerto Rico; the Federal Bar Examination Committee, District Court for the District of Puerto Rico as well; Fellow, Federal Bar Association; and the Vice President for the First Circuit, Federal Bar Association, among others. He has published several law review articles on maritime law, criminal law, and ethics.

His impeccable record in public service and in the field of law has earned him a place among the most distinguished jurists and attorneys in Puerto Rico. On May 2, 2006, Gelpi was awarded an Honorary Doctor of Laws Degree by his alma mater, Suffolk University Law School.

This nominee has received widespread support from those who have worked with him. Those who encounter him in the courtroom speak with respect and admiration. The Federal Bar Association, Puerto Rico Chapter, expressed its unconditional satisfaction with his qualifications and recognized him, and I quote, as an "exceptional, competent, and qualified Federal legal professional." The Hispanic National Bar Association likewise expressed unconditional satisfaction with his qualifications, noting, and I quote again, "seldom have we witnessed such an accomplished career and steadfastness of service in a candidate for the United States District Court of Puerto Rico."

On May 30, 2006, the American Bar Association issued a unanimous vote rating Mr. Gelpi as "Qualified" for appointment as judge of the United States District Court for the District of Puerto Rico. Mr. Chairman, Mr. Gelpi without any doubt is at the top of the legal profession in his community. I believe that Mr. Gelpi possesses the intellectual capacity and dedication to faithfully and impartially perform the duties of his new position. It is my pleasure to introduce to you and to recommend with enthusiasm Mr. Gustavo Gelpi, a nominee that fully understands the responsibility that a position on the Federal bench entails and will excel, I am sure, in his new position.

Thank you again, Mr. Chairman. I thank you all for being here today.

Senator COBURN. Thank you, Congressman Fortuño.

Next we have one of my favorite people in the Senate, the Chairman of the Appropriations Committee, Hon. Thad Cochran. Senator?

PRESENTATION OF DANIEL P. JORDAN III, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, BY HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. Mr. Chairman, thank you for the opportunity of being here today to recommend to the Senate Judiciary Committee Daniel Jordan III for service as a judge on the United States District Court for the Southern District of Mississippi. I have been here a good many years now, and we have had several distinguished candidates for the Federal judiciary before the Committee for review and for confirmation. But I frankly do not recall anyone who has ever been better qualified to serve in the position to which he has been nominated than Dan Jordan III. He is a very intelligent, hard-working, conscientious lawyer in the largest city in our State—Jackson, Mississippi. He is affiliated as a partner with one of the leading law firms in our State, the largest, really, of home-grown law firms practicing in our State of Mississippi. And he has an unblemished record in terms of good character, good judgment, professional competence, and just generally being a good citizen.

I do not know of any other more compelling evidence of that than the amount of time and effort he has volunteered to help the victims of the Katrina disaster. He went to the Gulf Coast and helped establish a pro bono legal assistance operation there, providing advice, counsel, and assistance to those who were victims of that devastating hurricane in our State. It was not fun even just being on the coast during the last several months because of the widespread and complete destruction that occurred in that part of our State. And so leaving your family and your law practice and other responsibilities and spending the time and effort that he has personally spent to that cause I think is very impressive and it illustrates the kind of person he is.

But beyond that, I have known his parents. I happened to be in college with them. As a matter of fact, his father and I were good friends. His father was a varsity basketball player at the University of Mississippi, and incidentally, Dan Jordan was captain of his high school basketball team in Richmond, Virginia, where he was when he was in high school. Dan and Lou Jordan, his parents, are some of the best respected and finest people that we have from Mississippi. They live in Charlottesville because Dan Jr. is the President of the Thomas Jefferson Foundation, which has the responsibility of managing and seeing to the operations, overseeing Monticello, the Thomas Jefferson home there. He serves as a visiting scholar at the University of Virginia as well because he was a distinguished history professor before he assumed this responsibility. But they live there now, and that is where Dan spent some of his growing-up days. But they are Mississippians. They go way back in our State. And Dan III returned to Mississippi after he graduated from law school at the University of Virginia where he had done very well as a student. He immediately went to work in the law firm there in Jackson. He is involved in litigation. He has

been honored for his good work in the legal circles. He has been President of the Young Lawyers Section of the Mississippi State Bar, a job I used to have. I thought that was about the highest honor I could ever hope to have. It was a big deal. But it is an indication in his case of the respect that other lawyers have for him who are his age and beyond.

He is an ideal person for this job, and I am really glad that I had a chance to come by today to congratulate him and to indicate to the Committee the high opinion I have of him and the high hopes I have of his service on the Federal judiciary.

I predict he will serve with great distinction and reflect credit on his family and on our State and on this Committee for recommending his confirmation by the Senate.

Thank you.

Senator COBURN. Senator Cochran, thank you so much.

I would now ask for our nominees to come forward and rise and lift your right hand. Do you swear that the testimony you are about to give before this Committee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HOLMES. I do.

Mr. JORDAN. I do.

Judge GELPI. I do.

Senator COBURN. Please be seated.

Our first nominee is Jerome Holmes. He is nominated to be a circuit court judge on the United States Court of Appeals for the Tenth Circuit. If confirmed, Mr. Holmes will be the first American of African descent to serve on that court. Mr. Holmes comes before this Committee with stellar academic and legal credentials. He graduated from Wake Forest University cum laude in 1983, Georgetown University Law Center in 1988. While at Georgetown, he served as editor-in-chief of the Georgetown Immigration Law Journal. Recently, in 2000, he earned his master's of public administration from Harvard's Kennedy School of Government.

Between college and law school, he worked briefly as a social services assistant with the D.C. Department of Corrections. While in law school, he clerked for Hon. Wayne E. Alley of the U.S. District Court for the Western District of Oklahoma and Hon. William J. Holloway of the U.S. Court of Appeals for the Tenth Circuit.

Following his clerkships, he spent 3 years in private practice as an associate with the well-regarded law firm of Steptoe & Johnson. In 1994, he began a distinguished career as a Federal prosecutor, serving as an Assistant U.S. Attorney in the Western District of Oklahoma. Among other duties, he prosecuted public corruption, Federal criminal civil rights violations, and was the office's first antiterrorism coordinator. He also worked on the prosecution team that built the case against the perpetrators of the Oklahoma City bombing.

Since 2005, he has been a director of the prominent law firm of Crowe & Dunlevy, where he has focused on white-collar criminal defense and complex litigation. He also chairs the firm's Diversity Committee.

Mr. Holmes has given back to the people of Oklahoma by taking leadership roles in a wide variety of civic organizations. These include services as director of the Oklahoma Medical Research Foun-

dation, a trustee of the Oklahoma City National Memorial Foundation, director of the Oklahoma Academy of State Goals, Chairman of the City Rescue Mission, and Vice President of the Oklahoma Bar Association. The American Bar Association has unanimously found Mr. Holmes to be qualified to serve on the Tenth Circuit.

Our second nominee today is Gustavo Antonio Gelpi, nominated to be a district court judge for the District of Puerto Rico. As magistrate, he was nominated by President Bush to be a judge on the U.S. District Court for the District of Puerto Rico on April 24, 2006. He graduated from Brandeis University in 1987, received his J.D. from the Suffolk University Law School in 1991. He began his legal career clerking for Hon. Juan Perez-Gimenez on the U.S. District Court for the District of Puerto Rico.

Following his clerkship, he joined the Office of the Federal Public Defender for the District of Puerto Rico as an assistant Federal public defender. In that capacity, he provided legal assistance to the indigent defendants in criminal cases. During his time in the public defender's office, he served as special counsel to the U.S. Sentencing Commission, where he worked on revisions to Sentencing Guidelines.

In 1997, he joined the Puerto Rico Department of Justice as an Assistant to the Attorney General. Later that year, he joined the Department's Office of Legal Counsel. In 1999, he began serving as Puerto Rico's Solicitor General. Following the year as Solicitor General, he entered private practice with the San Juan firm of McConnell Valdes, where he has worked on commercial litigation. In 2001, he was appointed to serve as U.S. magistrate judge for the District of Puerto Rico. In that capacity, his recommendations have consistently been adopted by the district court. The American Bar Association unanimously rated Judge Gelpi as qualified.

Finally, Daniel Porter Jordan III, our third nominee, was nominated to be a district court judge for the Southern District of Mississippi. He received his BBA from the University of Mississippi in 1987, his J.D. from the University of Virginia Law School in 1993. Between college and law school, he was a legislative assistant, as we heard earlier, for Senator Trent Lott. That had to have been fun. Following law school, he joined Butler, Snow, O'Mara, Stevens & Canada as an associate, and since 2000, he has been an equity member of the firm, practicing chiefly in the area of product liability. He has also gained significant experience in mediating cases. He has been very involved with the Mississippi Bar Association, including serving as a member of the Board of Directors, and both Secretary and Treasurer of the Litigation Section. He has been active in pro bono activities and was awarded the Hinds County Bar Association Pro Bono Award in 2005. He has received a unanimous qualified rating by the American Bar Association.

Gentlemen, we welcome you to the Committee today. We would be pleased to hear any statement that you care to make, and I would ask that you introduce your family and friends who are here for your hearing. Please try to limit your statements to 5 minutes. We will not enforce that, however, if you feel that there is more that we should have. We will begin with Mr. Holmes. Welcome.

**STATEMENT OF JEROME A. HOLMES, NOMINEE TO BE
CIRCUIT JUDGE FOR THE TENTH CIRCUIT**

Mr. HOLMES. Thank you, Dr. Coburn. I don't believe I will need to go over 5 minutes.

I do not have a formal statement to make, but I would like to thank President Bush for the confidence and trust that he has placed in me in nominating me for this important position on the Federal bench. I would like to thank you, Dr. Coburn, for all of your support, as I have gone through this nomination process. I would also like to extend warm thanks to Senator Inhofe both for his kind remarks today and for his kind remarks through this process that have been very encouraging to me and supportive.

With me today are my sister, Jean W. Holmes, who is a resident of the District of Columbia and who works at the Environmental Protection Agency; and my law partner and good friend, William H. Hoch III. Will on very short notice arranged to come to Washington to be here for this proceeding, and I am very grateful for that.

With that, I would welcome any questions from the Senator at the appropriate time.

[The biographical information of Mr. Holmes follows:]

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CROWE & DUNLEVY
A PROFESSIONAL CORPORATION
Attorneys and Counselors at Law
Founded 1902

JEROME A. HOLMES
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Direct Fax: 405.272.5869

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May 8, 2006

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

**Re: Nomination of Jerome A. Holmes
Tenth Circuit Court of Appeals**

Dear Senator Specter:

On February 14, 2006, President George W. Bush nominated me for a judicial position on the U.S. District Court for the Northern District of Oklahoma. With that nomination in mind, I prepared and submitted to the U.S. Senate on or about March 6, 2006, my Senate Questionnaire. Subsequently, on May 4, 2006, President Bush withdrew the District Court nomination and nominated me to a judicial post on the U.S. Court of Appeals for the Tenth Circuit.

I have reviewed my March 6th Senate Questionnaire. I have attached a 3-page document, a Net Worth Statement, a Net Worth Schedule, and a Financial Disclosure Report. These materials update and supplement the information in the March 6th Questionnaire and also correct certain inadvertent errors.

To the best of my knowledge and belief, the information contained in these materials is accurate and correct. In submitting them, I deem myself to be fully bound by the oath that I took in connection with the March 6th Questionnaire. Thank you for your consideration of my nomination.

Sincerely,

JEROME A. HOLMES

Attachments

TULSA
500 KENNEDY BUILDING
321 SOUTH BOSTON AVENUE
TULSA, OK 74103-3313
TEL: 918.592.9800 • FAX: 918.592.9801

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May 8, 2006

The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

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JEROME A. HOLMES

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SENATE QUESTIONNAIRE
Supplemental Information and Corrections
Jerome Allison Holmes

I. BIOGRAPHICAL INFORMATION

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

For my employment with the Honorable Wayne E. Alley, the correct period of service is 08/1988 to 08/1990 (not, as noted in the answer, 08/1988 to 09/1990).

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I inadvertently omitted from the list of organizations the Tenth Judicial Circuit Historical Society.

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Presentation to the Heartland Rotary Club of Oklahoma City

Date: May 4, 2006

Subject: Law Day Presentation Regarding the Law's Role as an Important Foundation for a Free and Economically Prosperous Society

17. **Legal Career:**

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Since I submitted my Senate Questionnaire on or about March 6, 2006, I have appeared on approximately two occasions in a trial court of the Oklahoma state courts.

2. What percentage of these appearances was in:
- | | | |
|-----|-------------------------|-----|
| (a) | federal courts: | 99% |
| (b) | state courts of record: | 1% |
| (c) | other courts. | |

II. FINANCIAL DATA AND CONFLICT OF INTEREST

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I currently seek confirmation to the position of U.S. Circuit Judge, not District Judge; the latter is referenced in the answer to this question.

III. GENERAL

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

There is an inadvertent typographical error in the third line of the answer to this question. The referenced pro bono landlord-tenant matter actually was litigated in approximately the 1993-1994 time frame, not the 2003-2004 period, which is noted in the answer.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

In light of my recent nomination to a judicial position on the U.S. Court of Appeals for the Tenth Circuit, I restate and supplement my answer to this question as follows:

I am not aware of the existence, or operation of, a selection commission with respect to the judicial post for which I have been nominated. I did not appear before such a commission. I submitted my resume to the two Oklahoma senators, along with a cover letter expressing my interest in being nominated

by President Bush for a judicial post. I met with Senator Tom Coburn on two occasions. I spoke on the telephone with Senator Inhofe approximately three times. Senator Inhofe had previously interviewed me personally in 2001, when I sought to be appointed U.S. Attorney for the Western or Northern District of Oklahoma. Subsequently, I was interviewed by representatives from the White House Counsel's Office and the Department of Justice. After undergoing a background investigation and completing nomination paperwork, the President forwarded my nomination for a judicial post on the U.S. District Court for the Northern District of Oklahoma to the Senate on February 14, 2006. In early March 2006, I communicated by telephone with the White House Counsel's Office concerning the open position on U.S. Court of Appeals for the Tenth Circuit. Shortly thereafter, I was interviewed by representatives from the White House Counsel's Office and the Department of Justice. At that time, I signed certain privacy waivers so that investigators could make any further inquiries that were deemed appropriate concerning my background. On May 4, 2006, President Bush sent my nomination for the Tenth Circuit judicial position to the U.S. Senate.

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FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		11	563	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities-add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		23	627
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		148	089
Real estate owned-add schedule		171	273	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		41	000	Student Loans		20	434
Cash value-life insurance							
Other assets itemize:							
Federal Thrift Savings Plan		206	662				
				Total liabilities		192	150
				Net Worth		238	348
Total Assets		430	498	Total liabilities and net worth		430	498
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

05/10/2008 17:48 FAX

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008/023

FINANCIAL STATEMENT
NET WORTH SCHEDULES

<u>Real Estate Owned</u>	
Personal residence	\$ 171,273
<u>Real Estate Mortgages Payable</u>	
Personal residence	\$ 148,089

05/10/2006 17:48 FAX

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AO-10 Rev. 1/2004		FINANCIAL DISCLOSURE REPORT NOMINATION FILING		Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)
1. Person Reporting (Last name, First name, Middle Initial) Holmes, Jerome A.	2. Court or Organization 10th Circuit	3. Date of Report 5/8/2006		
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. Circuit Judge - Nominee	5. Report Type (check appropriate type) <input checked="" type="radio"/> Nomination, Date 5/4/2006 <input type="radio"/> Initial <input type="radio"/> Annual <input type="radio"/> Final	6. Reporting Period 1/1/2005 to 4/30/2006		
7. Chambers or Office Address 20 N. Broadway, #1800 Oklahoma City, Oklahoma 73102	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____			
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.				

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ NONE - (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Director (Chair of Board of Directors)	City Rescue Mission
2. Director (Board of Directors)	Oklahoma Medical Research Foundation
3. Director (Board of Directors)	Oklahoma Academy for State Goals
4. Director (non-equity)	Crowe & Dunlevy, P.C.
5. Trustee (Board of Trustees)	Oklahoma City National Memorial Foundation
6. Vice President & Governor	Oklahoma Bar Association
7. Director (Board of Directors)	Oklahoma County Bar Association
8. Commissioner	American Bar Association, Commission on Homelessness & Poverty
9. Personal Representative	Estate # 1
10. Director (Former member of Board of Directors)	Prevent Blindness Oklahoma

I. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☒ NONE - (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	

05/10/2008 17:49 FAX

DOJ

010/023

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Holmes, Jerome A	5/8/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)**A. Filer's Non-Investment Income**☐ **NONE** - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2005	Crowe & Dunlevy, P.C., Salary	\$62,758
2.	2006	Crowe & Dunlevy, P.C., Salary	\$45,083
3.			

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)☐ **NONE** - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.		

IV. REIMBURSEMENTS - transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ **NONE** - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.		Exempt

05/10/2006 17:49 FAX

DOJ

011/023

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Holmes, Jerome A	Date of Report 5/6/2006
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V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)☐ **NONE** - (No such reportable gifts.)

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. Exempt		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)☐ **NONE** - (No reportable liabilities.)

<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1. Citibank	Promissory Note - Student Loan	J
2. Sallie Mae	Promissory Note - Student Loan	J

05/10/2006 17:49 FAX

DOJ

012/023

FINANCIAL DISCLOSURE REPORT

Page 1 of 1

Name of Person Reporting
Holmes, Jerome A.Date of Report
5/8/2006**VII. INVESTMENTS and TRUSTS** — income, value, transaction(s) (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions.)

A. Description of Assets (including trust assets) Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Asset Code 1 (A-J)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1. Bank of Oklahoma, Accounts	A	Interest	J	T	Exempt				
2. Estate # 1 (Sole Remaining Asset, Accounts)		None			Exempt				

Income/Gain Codes:	A = \$1,000 or less	B = \$1,001-\$1,500	C = \$2,501-\$5,000	D = \$5,001-\$15,000	E = \$15,001-\$50,000
(See Columns B1 and D4)	F = \$50,001-\$100,000	G = \$100,001-\$1,000,000	H1 = \$1,000,001-\$5,000,000	H2 = More than \$5,000,000	
Value Codes:	J = \$15,000 or less	K = \$15,001-\$50,000	L = \$50,001-\$100,000	M = \$100,001-\$250,000	
(See Columns C1 and D3)	N = \$250,001-\$500,000	O = \$500,001-\$1,000,000	P1 = \$1,000,001-\$5,000,000	P2 = \$5,000,001-\$25,000,000	
	P3 = \$25,000,001-\$50,000,000		P4 = \$50,000,001-\$100,000,000		
Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

05/10/2008 17:49 FAX

DOJ

013/023

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Holmes, Jerome A	Date of Report 5/8/2006
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part VII, line 2: The sole asset of Estate # 1, bank accounts, was distributed to the heirs before the end of the reporting period, in or about the summer of 2005. Accounts were closed around that same period in 2005.

Part IIIA: Filer's non-investment income for 2004 and part of 2005 includes U.S. Government Salary.

05/10/2008 17:49 FAX

DOJ

014/023

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Holmes, Jerome A	Date of Report 5/8/2006
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IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Jerome A. HolmesDate 05/08/2006

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Jerome Alison Holmes

2. Address: List current place of residence and office address(es).

Residence: Nichols Hills, Oklahoma

Office: 20 N. Broadway, Suite 1800
Oklahoma City, OK 73102

3. Date and place of birth.

November 18, 1961. Washington, D.C.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Never married.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Wake Forest University, 1979 - 1983, Bachelor of Arts, 1983.

Georgetown University Law Center, 1985-1988, Juris Doctor, 1988.

Harvard University, Kennedy School of Government, 1999-2000, Master of Public Administration, 2000.

Took courses at two colleges, without degree intentions: Howard University, May to July 1982, no degree; and University of the District of Columbia, January to May 1984, no degree.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Crowe & Dunlevy - Director, 08/2005 to present.

U.S. Attorney's Office, Western District of Oklahoma, Assistant U.S. Attorney, 1994-05.

Step toe & Johnson, Associate, 11/1991 to 04/1994.

Judge William J. Holloway, Jr., Judicial Law Clerk, 09/1990 to 09/1991.

Judge Wayne E. Alley, Law Clerk, 08/1988 to 09/1990.

National Association of Letter Carriers, Law Clerk, 06/1988 to 07/1988.

Step toe & Johnson, Law Clerk, 02/1988 to 04/1988.

United States Postal Service, Office of Labor Law, Summer Intern, 06/1987 to 08/1987.

Prof. Steven Goldberg, Research Assistant, 05/1986 to 12/1986.

D.C. Department of Corrections, Social Services Assistant, 11/1984 to 08/1985.

D.C. Department of Public Works, Contact Representative, 11/1983 to 11/1984.

James E. House, Analyst, 09/1983 to 11/1983.

D.C. Councilman William R. Spaulding, Legislative Intern, 06/1983 to 09/1983.

Oklahoma Medical Research Foundation, Director, 2004 to present.

Oklahoma City National Memorial Foundation, Trustee, 2004 to present.

Oklahoma Academy for State Goals, Director, 2003 to present.

City Rescue Mission, Director & Chair, 2003 to present.

Oklahoma Bar Association, Vice President & Governor, 2003 to present.

Oklahoma County Bar Association, Director, 2003 to 2005.

Prevent Blindness Oklahoma, Director, 2002 to 2004.

Oklahoma County Bar Association - Young Lawyers Division, Director, 1996 to 1997.

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

FBI Commendation, for Outstanding Prosecutive Skills (2004)

Director's Award from the Executive Office of U.S. Attorneys, for Superior Performance as an Assistant U.S. Attorney (2001)

John Marshall Award from the U.S. Attorney General, for Outstanding Legal Achievement (1998)

FBI Commendation, for Exceptional Service in the Public Interest (1998)

U.S. Attorney's OKBOMB Prosecution Award (1996)

U.S. Attorney's Extra Mile Award (1995)

U.S. Attorney's Special Appreciation Award (1994)

John B. Pickett Fellowship, Criminal Justice Policy and Management (Harvard University, 1999)

John McTigue Essay Award (Georgetown University Law Center, 1988)

Am Jur Award in Consumer Protection (Georgetown University Law Center, 1988)

Phi Alpha Theta, History Honor Society (Wake Forest University, President, 1983)

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Oklahoma Bar Association (OBA) -
Governor, OBA Board of Governors, 01/2003 to 12/2005
OBA Vice President, 01/2006 to present

Oklahoma County Bar Association (OCBA)
 Director, OCBA Board of Directors 01/2003 to 12/2005
 Director, Young Lawyers Division Board of Directors, 1996-1997

American Bar Association (ABA)
 1989 to present
 Commissioner, ABA Commission on Homelessness & Poverty - 08/2005 to present

Prettyman-Leventhal American Inn of court

William J. Holloway, Jr., American Inn of Court

Oklahoma City Association of Black Lawyers

National Black Prosecutors' Association

Cleveland County Bar Association

Federal Bar Association

Oklahoma Criminal Defense Lawyers

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

The Oklahoma Bar Association engages in lobbying activities before the Oklahoma legislature in support of legislation designed to improve the administration of justice and advance the legal profession. It is my understanding that the American Bar Association engages in lobbying for similar purposes on the federal level. The Oklahoma Medical Research Foundation, on whose Board of Directors I serve, engages in federal and state lobbying activities. I have no personal knowledge of lobbying activities by other organizations to which I belong. Other organizations to which I belong, not previously listed in this questionnaire, are the following:

Rotary Club of Oklahoma City (Club 29)

All Souls' Episcopal Church

Leadership Oklahoma City

Leadership Oklahoma

Harvard Club of Oklahoma City

Oklahoma Council on Public Affairs

Oklahoma Heritage Association

Oklahoma City Museum of Art

YMCA of Greater Oklahoma City

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Oklahoma, 1997

District of Columbia, 1991

Pennsylvania, 1988

Supreme Court of the United States, 1998

United States Court of Appeals for the Tenth Circuit, 1990

U.S. Court of Appeals for the D.C. Circuit, 1994

U.S. District Court for the District of Columbia, 1993

U.S. District Court for the District of Maryland, 1993-2002

U.S. District Court for the Western District of Oklahoma, 1999

U.S. District Court for the Northern District of Oklahoma, 2005

U.S. District Court for the Eastern District of Oklahoma, 2005

In or about 2002, members of the Bar of the U.S. District Court for Maryland were asked to affirmatively express their intention to renew their memberships. In September 2002, through written correspondence, I declined to renew my membership because I had decided to make Oklahoma my home and did not anticipate in the near future practicing law in the federal courts in Maryland.

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

African American Lawyers in Oklahoma, 75 Oklahoma Bar Journal 62 (Sept. 2004) (co-authored with Bruce Fisher)

Legal Comment, Standard of Proof for Antidiscrimination Cases Under the INA: League of United Latin American Citizens v. Pasadena Independent School District, 2 Geo. Immigr. Law Journal 427 (1987)

Legal Comment, Burden of Proof in Labor Certification Proceedings: Imperial Textiles, Inc. v. Secretary of Labor, 2 Geo. Immigr. Law Journal 197 (1987)

Legal Comment, Back Pay for Undocumented Aliens: Local 512 Warehouse & Office Workers' v. NLRB, 1 Geo. Immigr. Law Journal 667 (1986)

Book Review, 11 National Bar Association Magazine 33 (1997) (reviewing, Linn Washington, Black Judges on Justice: Perspectives from the Bench (1994))

Book Review, 39 Federal Bar & News Journal 540 (1992) (reviewing, John L. Jackley, Hill Rat: Blowing the Lid Off Congress (1992))

Opinion Piece *published in* Oklahoma Council on Public Affairs, Why Oklahomans from A to Z Should Embrace School Choice at 15 (2003)

"Ethics in Boardroom A Must." The Daily Oklahoman 12 September 2005

"A Step Closer to King's Dream." The Daily Oklahoman 19 Jan. 2004

"The Court Misses An Opportunity." The Daily Oklahoman 2 July 2003

"Race-based Policies Are Divisive." The Daily Oklahoman 8 December 2002

"Vouchers Promise Better Schools." The Daily Oklahoman 13 July 2002

"Racial Bias Claims Harm System." The Daily Oklahoman 28 April 2002

"Victimization Message Misguided." The Daily Oklahoman 27 January 2002

"Diallo Jurors Responsible for Answering Just One Question." Citizen (Student Publication of Harvard's Kennedy School of Government), March 2000 (www.ksg.harvard.edu/citizen/holm0306.html).

"African American Victims." The Economist 8 Sept. 2001

Correspondence, *Reconstruction*, 2.3 at 175 (1994)

Letter, Wall St. Journal, 4 Sept. 1992.

I also recall writing a letter to the editor of the student newspaper at Wake Forest University, Old Gold & Black, in approximately 1981 or 1982 concerning some aspect of the affirmative action debate. I do not have a citation for this piece.

Over the course of my career as a federal prosecutor, I made a number of educational presentations as a guest lecturer about subjects such as white collar crime, prosecutorial ethics, and the role of the U.S. Attorney's Office in the criminal justice system. I also have spoken on occasion to small groups, including a breakfast group of my Rotary Club, about my job and personal history. And, in one instance, I was asked to speak in my personal capacity to a college class about my views concerning affirmative action and race in America. In addition, since leaving the U.S. Attorney's Office, I have spoken to a group concerning the work of the Oklahoma Academy for State Goals (with which I am affiliated as a Director) and the Academy's most recent public policy proposals relating to drug courts and legal sanctions for the sale of alcohol to minors. I have not considered these presentations to be formal speeches but, instead, informal talks or teaching opportunities. Perhaps worthy of specific mention as possibly falling into the category of speeches, however, are the following:

Presentation at Summit of Oklahoma Academy for State Goals

Date: January 10, 2006

Subject: The Oklahoma Academy's Town Hall Process & Policy Proposals from Its 2006 Town Hall Concerning Drug Courts and Legal Sanctions for Sale of Alcohol to Minors

Presentation to Kiwanis Club of Oklahoma City

Date: May 24, 2004

Subject: Patriot Act and Role of Anti-Terrorism Coordinator in U.S. Attorney's Office

Presentation to Leadership Oklahoma Class XVIII

Date: November 5, 2004

Subject: Participant in Two-Person Debate About the Death Penalty with Prominent Criminal Defense Attorney

13. **Health:** What is the present state of your health? List the date of your last physical examination.

I am in excellent physical health. My last physical was on December 14, 2005.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held a judicial office.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I have never been a judge.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1994 - 2005, Assistant United States Attorney, appointed.

I have never been a candidate for elective public office.

17. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

1988-1990

The Honorable Wayne E. Alley

United States District Court for the Western District of Oklahoma

1990-1991

The Honorable William J. Holloway, Jr.

United States Court of Appeals for the Tenth Circuit

2. whether you practiced alone, and if so, the addresses and dates;

I never practiced law alone.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

Steptoe & Johnson - 1330 Connecticut Avenue, Washington, D.C. 20036 - Associate, 11/1991 to 04/1994.

U.S. Attorney's Office - 210 W. Park Avenue, #400, Oklahoma City, Oklahoma 73102 - Assistant U.S. Attorney, 05/1994 to 08/2005. During this period, I occupied roles as Deputy Chief of the Criminal Division (1996 to 2004), Anti-Terrorism Coordinator (2003 to 2005); Team Leader of the General Crimes Team (2005), and Professional Responsibility Officer for the Criminal Division (1994 to 2005).

Crowe & Dunlevy - 20 N. Broadway, # 1800, Oklahoma City, Oklahoma 73102 - Director, 08/2005 to present.

- b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

Following the period of my federal clerkships, during which I assisted the Judges on both civil and criminal matters, I was in private practice from November 1991 to April 1994. I worked as a Litigation Associate at a full-service law firm of approximately 200 attorneys. I worked exclusively on civil matters, primarily involving employment, transportation, insurance, and (to a lesser extent) immigration laws.

From May 1994 to August 2005, I was a federal prosecutor at the U.S. Attorney's Office for the Western District of Oklahoma, handling exclusively criminal matters. My practice was primarily focused on white collar and public corruption offenses. I also prosecuted violent crime offenses, taking to trial cases involving domestic terrorism, murder-for-hire, and bank robbery crimes. In addition, I worked from April 1995 to February 1996, on the Oklahoma City Bombing Prosecution Team.

Since leaving the U.S. Attorney's Office in August 2005, I have worked as a litigator at one of the largest law firms in Oklahoma, Crowe & Dunlevy. It is a firm of approximately 111 attorneys. My practice is focused on white collar

criminal defense, corporate counseling concerning criminal and civil enforcement issues, and complex civil litigation.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

During my first years in private practice (1991 to 1994), I represented large corporations involved in commercial disputes with other corporations or engaged in defending against employment suits brought by individuals. My practice was litigation-based and involved civil matters; otherwise, it was not specialized.

For over 11 years (1994 to 2005), I worked as a federal prosecutor. My only client was the United States. I worked only on criminal matters, primarily those involving white collar and public corruption crimes.

Since leaving government service in August 2005, my clients have been primarily large corporations. I currently am counseling a major corporate client with respect to civil and criminal enforcement issues and I am representing other corporate clients in civil litigation.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

During my first years in private practice (1991-1994), my courtroom appearances were very limited. While at the U.S. Attorney's Office (1994-2005), I appeared frequently in court, in connection with trials, hearings, and other proceedings. Since entering private practice in August 2005, I have not appeared in court; however, my practice is litigation-based and I anticipate that I will be doing so.

2. What percentage of these appearances was in:
 (a) federal courts: 100%
 (b) state courts of record:
 (c) other courts.

3. What percentage of your litigation was:
 (a) civil: 15%;
 (b) criminal: 85%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried 7 cases to verdict. I tried one alone and shared the trial responsibilities equally on the other 6 cases.

5. What percentage of these trials was:
- (a) jury: 100%
 - (b) non-jury.

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Brent VanMeter and James Smart, CR-00-067-T (District Court); United States v. VanMeter, 278 F.3d 1156 (10th Cir. 2002); United States v. Smart, 278 F.3d 1168 (10th Cir. 2002).

This was a widely-publicized public corruption prosecution. It stemmed from a broader investigation begun in 1996 by the Federal Bureau of Investigation (FBI) that centered around allegations that Oklahoma State Department of Health (OSDH) employees were extorting or soliciting bribes from nursing home operators in exchange for official acts. The principal figure in that investigation was Brent VanMeter, the Deputy Commissioner for Special Health Services (SHS). SHS was responsible for every facet of the regulation of long term care facilities (i.e., nursing homes). During the course of the investigation, the FBI sought to acquire evidence through a variety of means, including court-approved wire taps. On April 17, 2000, the FBI intercepted a telephone conversation between VanMeter and a nursing home operator named James Smart. In that conversation, VanMeter solicited and Smart agreed to provide a bribe in exchange for VanMeter altering the OSDH's paperwork to permit Smart's nursing homes to recover more federal health care monies than they were entitled to as reimbursement for a medical procedure. VanMeter and Smart were indicted on May 17, 2000, for violations of the federal bribery statute, 18 U.S.C. § 666. I entered an appearance in the matter on July 10, 2000.

The defendants went to trial on October 11, 2000. Following five days of evidence and arguments, the jury returned guilty verdicts as to both defendants on October 18, 2000. The defendants were sentenced one month later, on December 18, 2000. The sentencing proceeding raised a number of issues under the Sentencing Guidelines. The parties vigorously litigated them. Each defendant was sentenced to a term of imprisonment of 36 months and fined \$50,000. The defendants appealed and the convictions were affirmed by the Tenth Circuit Court of Appeals in March 2002. I tried this matter with one other attorney. We equally shared the trial responsibilities. I took the lead in drafting a sentencing memorandum to support the government's position in the December sentencing and argued for the government in that proceeding. I was the principal drafter of the appellate briefs for the government in the appeals of VanMeter and Smart. For my work on this matter, I received an award from the Director of the Executive Office of U.S. Attorneys, for Superior Performance as an Assistant U.S. Attorney, and from FBI Director Robert S. Mueller, III.

Court: U.S. District Court for the Western District of Oklahoma

Judge: The Honorable Ralph G. Thompson

Co-Counsel: The Honorable Arlene Johnson
230 State Capitol Building
Oklahoma City, Oklahoma 73105
(405) 521-2157

Defense Counsel: Mack K. Martin, Esq.
Martin Law Office
119 N. Robinson Ave., Suite 360
Oklahoma City, OK 73102
(405) 236-8888
Lead Counsel for VanMeter

J. David Ogle
Ogle & Welch
117 Park Avenue
Oklahoma City, OK 73102
(405) 232-9800
Counsel for VanMeter

Burck Bailey
Warren F. Bickford, IV
Fellers, Snider Blankenship Bailey
1000 N. Broadway Avenue, Suite 1700
Oklahoma City, Oklahoma 73102
(405) 232-0621
Counsel for Smart

2. United States v. Sean Gillespie, CR-04-94-C

This was a widely-publicized domestic terrorism/hate crimes case arising from the fire bombing of a Jewish synagogue by an avowed white supremacist, Sean Gillespie. Gillespie fire bombed a Jewish synagogue in Oklahoma City with a Molotov cocktail around April 1, 2004. As the evidence later revealed, Gillespie video taped himself doing the crime. Following a vigorous investigation by the FBI, Gillespie was located in Arkansas. The government filed a complaint and secured a warrant for his arrest on April 16, 2004.

Gillespie was arrested and subsequently indicted on May 19, 2004, for several firearms crimes, including an offense under 18 U.S.C. § 924(c)(1)(A) that carried a mandatory minimum penalty of 30 years. Gillespie went to trial on April 25, 2005. Gillespie strongly opposed the government's plan to admit evidence at trial of his other bad acts. Before trial, the parties briefed the legal issues concerning the admissibility of this evidence and presented oral arguments to the Court. The Court ruled in favor of the government. The case was tried to a jury for 1 ½ days. The jury returned a verdict of guilty on April 26, 2005, on all counts. Gillespie filed a motion for judgment of acquittal the same day. The government filed a written response and the Court denied Gillespie's motion. Gillespie was sentenced to a prison term of 468 months. The matter is currently on appeal to the Tenth Circuit Court of Appeals.

I took the lead in drafting the complaint paperwork, including assisting the FBI agents in the preparation of the underlying affidavit. I tried the case with one other attorney. We equally shared the trial responsibilities. I took the lead in drafting the winning brief regarding the admissibility of the other bad acts and drafted the government's successful response to Gillespie's motion for judgment of acquittal. Gillespie was sentenced after I left the U.S. Attorney's Office.

Court:	U.S. District Court for the Western District of Oklahoma
Judge:	The Honorable Robin J. Cauthron
Co-Counsel:	Scott L. Palk, Esq. U.S. Attorney's Office 210 W. Park Avenue, Suite 400 Oklahoma City, OK 73102 (405) 553-8700
Defense Counsel:	Susan M. Otto, Esq. Paul A. Lacy, Esq. (Lead) Office of the Federal Public Defender 215 Dean A. McGee Avenue, Suite 109 Oklahoma City, Oklahoma 73102 (405) 609-5930

3. United States v. William Eaton, CR-98-184-R (District Court); 208 F.3d 227, 2000 WL 293789 (10th Cir. March 21, 2000) (unpublished disposition).

This was a bank robbery and obstruction of justice prosecution, which implicated the federal three strikes statute, 18 U.S.C. § 3559(c). A career criminal, William Eaton, was convicted in this case following a jury trial and sentenced to life imprisonment. The prosecution commenced with Eaton's arrest on September 11, 1998. He was charged by indictment on October 21, 1998. That indictment was superseded on November 18, 1998. I formally entered my appearance the day before the superseding indictment was returned, November 17, 1998, and assisted in the grand jury process.

Eaton was charged with two counts of bank robbery, two fire arms crimes, a count of obstruction of justice, and two counts of witness tampering. The evidence established that Eaton robbed two banks in the Oklahoma City area and attempted to elicit help in fabricating an alibi. The matter was set for trial on December 14, 1998. Eaton filed a flurry of motions, among other things seeking to suppress incriminatory correspondence he had written and to dismiss the indictment on multiplicity grounds. The government filed written responses to Eaton's motions. Further, the government filed motions of its own. Specifically, it sought to compel the testimony of two witnesses. The court granted the government's motions and immunized the witnesses. It also ruled on Eaton's motions, denying him relief. The case proceeded to trial and the jury returned a verdict of guilty on all counts on December 18, 1998. The Court sentenced Eaton under the three strikes statute to a prison term of life. Eaton appealed and the sentence was affirmed by the Tenth Circuit in March 2000. I worked on this case with one other attorney. I equally shared the responsibility of responding to Eaton's pre-trial motions. I also equally shared with my co-counsel the responsibilities of putting on evidence at trial. I further assisted in presenting the government's position at the sentencing proceeding.

Court: U.S. District Court for the Western District of Oklahoma

Judge: The Honorable David L. Russell

Co-Counsel: Daniel G. Webber Jr., Esq.
Ryan Whaley Coldiron
119 N. Robinson Street, Suite 900
Oklahoma City, OK 73102
(405) 239-6040

Defense Counsel: J. David Ogle
Ogle & Welch
117 Park Avenue
Oklahoma City, OK 73102
(405) 232-9800
Lead Counsel for Eaton

Mack K. Martin, Esq.
Martin Law Office
119 N. Robinson Ave., Suite 360
Oklahoma City, OK 73102
(405) 236-8888
Counsel for Eaton

4. United States v. Sharon Canby, CR-94-139-A

This was a murder-for-hire prosecution. It commenced with the arrest of defendant Sharon Canby on June 24, 1994. She was indicted on September 7, 2004 and charged under the federal murder-for-hire statute, 18 U.S.C. § 1958. I formally entered an appearance in the case on September 28, 1994. The trial was scheduled to begin on October 12, 1994. The charge was based upon Canby's use of a telephone to recruit someone to kill her husband. In attempting to consummate her plan, Canby ended up negotiating with an undercover FBI agent, assuming the hired-killer role.

With some factual foundation, Canby claimed to have been physically abused by her husband. The government anticipated that Canby would seek to introduce evidence during the trial of that abuse. Accordingly, the government took the somewhat unusual step of moving the Court to conduct individual *in camera* voir dire - specifically, to question the jurors individually in chambers on the sensitive issue of whether they or anyone close to them had suffered some form of domestic abuse. The procedure seemed to work well in ferreting out jurors who might have difficulty being fair in a trial with overtones of domestic abuse.

The parties presented evidence to the jury for four days. On October 18, 1994, the jury returned a verdict of guilty. Prior to sentencing, Canby filed a motion for departure downward from the otherwise-applicable imprisonment range under the U.S. Sentencing Guidelines, claiming she suffered from diminished capacity due to the abuse she suffered at her husband's hands. The government took the unusual step of not opposing the downward departure; it simply filed a written brief offering an analysis regarding the appropriate extent of any departure. At the sentencing, on December 12, 1994, the Court granted the downward departure motion and sentenced Canby to a prison term of 63 months. She did not appeal.

I tried the case with one other attorney. We equally shared the trial responsibilities. I took the lead in seeking individual voir dire and in presenting the government's position - in writing and orally - regarding the requested downward departure.

Court: U.S. District Court for the Western District of Oklahoma

Judge: The Honorable Wayne E. Alley

Co-Counsel: The Honorable Arlene Johnson
230 State Capitol Building
Oklahoma City, Oklahoma 73105
(405) 521-2157

Defense Counsel: Teresa K. Brown, Esq.
Office of the Federal Public Defender
215 Dean A. McGee Avenue, Suite 109
Oklahoma City, Oklahoma 73102
(405) 609-5930
Counsel for Canby

5. United States v. Robert Cochran, CR-95-128-T (District Court). 109 F.3d 660 (10th Cir. 1997).

This was a complex white collar prosecution involving a bond broker's alleged unlawful receipt of undisclosed payments from participants in bond deals he negotiated. Robert Cochran was the bond broker. He was indicted on September 20, 1995, charged with wire fraud and money laundering offenses. Also charged in the matter was Michael B. Garrett, who was ultimately acquitted.

I formally entered an appearance in the case on March 21, 1996. My role in this matter related solely to a three-day evidentiary hearing that took place in April 1996. Defendants alleged that the government improperly obtained privileged communications from Cochran's unindicted corporate employer, Stifel Nicolaus & Co., and had used these communications to support the charges of the indictment. The parties extensively briefed the privilege issues, put on evidence, and presented legal arguments to the Court. The Court ruled in the government's favor and rejected defendant's allegations. I received a letter of commendation from U.S. Attorney General Janet Reno for my work on this matter.

Cochran and Garrett were tried before a jury by other prosecutors in the latter part of April and early May in 1996. Cochran was convicted, but his conviction was ultimately overturned on appeal by the Tenth Circuit Court of Appeals. That Court rejected the government's wire fraud theory. As noted, Garrett was acquitted.

I participated in the 3-day hearing with co-counsel. We equally shared the responsibilities of putting on evidence and making arguments. I took the lead in drafting pleadings related to the hearing.

Court: U.S. District Court for the Western District of Oklahoma

Judge: The Honorable Ralph G. Thompson

Co-counsel: The Honorable Arlene Johnson
 230 State Capitol Building
 Oklahoma City, Oklahoma 73105
 (405) 521-2157

Henry Hockeimer Jr. Esq.
 Ballard, Spahr, Andrews & Ingersoll, LLP
 1735 Market Street, 51st Floor
 Philadelphia, PA 19103
 (215) 864-8204

Defense Counsel: Drew Neville Jr., Esq. (Lead)
 Bernard Rothbaum Jr., Esq.
 Russell A. Cook, Esq.
 Hartzog, Conger et al.
 201 Robert S. Kerr Avenue, Suite 1600
 Oklahoma City, OK 73102
 (405) 235-7000
 Counsel for Cochran

Mack K. Martin, Esq.
 Martin Law Office
 119 N. Robinson Ave., Suite 360
 Oklahoma City, OK 73102
 (405) 236-8888
 Counsel for Garrett

6. United States v. Paul Graham, CR-96-17-R

This was a tax prosecution. A tax protestor, Paul Graham, was indicted for failure to file returns and income tax evasion on January 17, 1996. I formally entered an appearance in the matter on February 20, 1996. Prior to trial, the government prepared legal memoranda on some complex tax law issues, including a memorandum concerning the separate-offense nature under the Double Jeopardy Clause of, respectively, the crimes of tax evasion and failure to file taxes, and a trial brief addressing among other things the effect of a defendant's misguided understanding of the tax laws on his possession of the requisite criminal intent. The case proceeded to jury trial on March 11, 1996. After two full days of putting on evidence, the parties rested. At that point, before closing arguments, Graham decided to plead guilty. He pled guilty to one count of tax evasion and was sentenced to a prison term of five months. He did not appeal. I tried the case with one other lawyer. We equally shared the trial responsibilities. I took the lead in drafting the double jeopardy motion and portions of the trial brief.

Court: U.S. District Court for the Western District of Oklahoma

Judge: The Honorable David L. Russell

Co-Counsel: Henry Hockeimer Jr. Esq.
Ballard, Spahr, Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
(215) 864-8204

Defense Counsel: Paul A. Lacy, Esq.
Office of the Federal Public Defender
215 Dean A. McGee Avenue, Suite 109
Oklahoma City, Oklahoma 73102
(405) 609-5930
Counsel for Graham

7. United States v. Virgil Copus, CR-94-73-T (District Court). 110 F.3d 1529 (10th Cir. 1997).

This was a bank fraud prosecution involving false statements to a federally-insured bank. Defendant Virgil Copus was indicted on May 17, 1994, for violations of 18 U.S.C. § 1014. My co-counsel, Arlene Johnson (then Arlene Joplin), and I entered the case to do the trial sometime in early July 1994. We found the indictment created some confusion regarding Copus's conduct. Accordingly, we researched the law and took the somewhat novel step of moving the Court to strike language from the indictment. We argued that such an action would not amount to an unconstitutional amendment of the indictment. The Court granted our motion. The case proceeded to trial on July 18, 1994. The jury heard evidence and arguments for five days and returned a verdict of guilty as to one count of the two-count indictment, acquitting him on the other charge.

At issue in the sentencing proceeding were complex issues regarding the computation of actual and intended loss under the U.S. Sentencing Guidelines. The government presented a sentencing memoranda on these issues. The Court sentenced defendant to a 24-month prison term and ordered him to pay approximately \$183,146.00 in restitution.

Copus appealed. The Tenth Circuit upheld the conviction but remanded the case to the Court to clarify its ruling concerning loss amounts and its finding of obstruction of justice. The parties reached a stipulation regarding the amounts of loss before the re-sentencing, and the government submitted a brief on the obstruction of justice issue. At the re-sentencing, the Court found that Copus had in fact obstructed justice by committing perjury at trial and adjusted his sentence upward based on this misconduct. Ultimately, Copus was sentenced to a 16-month prison term.

I took the case to trial with co-counsel, Arlene Johnson. We shared equally the responsibilities of presenting evidence at trial. I thought of the idea of striking language from the indictment and took the lead in preparing the motion seeking this relief. I also was primarily responsible for the preparation of the sentencing memoranda for the initial sentencing and the re-sentencing. I was solely responsible for the litigation at the re-sentencing.

Court: U.S. District Court for the Western District of Oklahoma

Judge: The Honorable Ralph G. Thompson

Co-counsel: The Honorable Arlene Johnson
230 State Capitol Building
Oklahoma City, Oklahoma 73105
(405) 521-2157

Defense Counsel: Jeff Payton
Lloyd Payton
P.O. Box 1326
Muskogee, OK 74402
(918) 683-3219
Counsel for Copus

Joseph W. Streatly
U.S. Department of Human Services
Office of the General Counsel
P.O. Box 53025
Oklahoma City, OK 73152-3025
(405) 521-6816
Counsel for Copus

8. United States v. Cynthia Stoner, CR-94-44-W (District Court). 98 F.3d 527 (10th Cir. 1996), adhered to in part on rehearing en banc, 139 F.3d 1343 (10th 1998) (per curiam).

This was a public corruption case involving the embezzlement of Native American tribal funds by a tribal leader and a conspiracy to accomplish that crime. Cynthia Stoner, an official of the Ponca Tribe, was indicted on March 16, 2004. I joined the prosecution team for the trial at the end of May or the beginning of June 1994. The case went to trial on June 16, 1994. On the first day of trial, Stoner filed a motion raising an issue of first impression in the Tenth Circuit concerning the government's pleading and proof obligations regarding the statute of limitations in the context of conspiracy prosecutions. Stoner sought dismissal of the government's conspiracy charge on the grounds that it did not expressly list an overt act within the statute of

limitations period. The government filed a brief in opposition to Stoner's motion. The Court took the matter under advisement and the trial commenced.

The jury heard evidence for three days. After the parties rested, the Court denied Stoner's motion challenging the conspiracy count. The jury then heard arguments and returned a verdict of guilty against Stoner on the conspiracy count. It acquitted her of the substantive counts of the indictment. Stoner filed motions for judgment of acquittal and for a new trial. The government responded to those motions. The Court denied Stoner's motions and sentenced her to a 12-month prison term. Stoner appealed. A three-judge panel of the Tenth Circuit Court of Appeals affirmed the conviction, specifically holding in favor of the government on the statute of limitations issue. Upon rehearing en banc, however, the Tenth Circuit was evenly split on the statute of limitations issue, so it affirmed the judgment of the district court and stripped the panel's decision of precedential value.

I tried this case with another attorney. This was my first trial and my co-counsel handled some of the more challenging witnesses. Nonetheless, I played a significant role in the litigation of the matter, putting on a few witnesses, and making a portion of the closing argument. I took the lead in formulating the government's response to the issue of first impression concerning the statute of limitations and drafting the winning response brief. I also was principally responsible for preparing the government's responses to the motions for new trial and judgment of acquittal.

Court: U.S. District Court for the Western District of Oklahoma

Judge: The Honorable Lee West

Co-counsel: Ross N. Lillard III, Esq.
U.S. Attorney's Office
210 W. Park Avenue, Suite 400
Oklahoma City, OK 73102
(405) 553-8700

Defense Counsel: Wesley C. Fredenburg, Esq.
Velocity Express Corporation
7803 Glenroy Road, Suite 200
Minneapolis, MN 55439
(612) 492-2400
Lead Counsel for Stoner

Rustin J. Strubhar
Crowe & Dunlevy
20 N. Broadway, Suite 1800
Oklahoma City, OK 73102
(405) 235-7700
Counsel for Stoner

9. United States v. Joshua Cabaniss, CR-98-40-M

This was the first prosecution in the Western District of Oklahoma, and by all accounts in any federal court in Oklahoma, under the Freedom of Access to Clinic Entrances Act - the FACE Act. Joshua Cabaniss, the defendant, physically assaulted and battered a physician who provided abortion services while the physician was working at his clinic. Following my discussions and negotiations with his attorney, on April 1, 1998, Cabaniss pled guilty to a FACE charge. Cabaniss objected to certain matters related to his sentencing, however, including an upward adjustment to his sentencing range under the U.S. Sentencing Guidelines, which the U.S. Probation Office proposed because of Cabaniss's assault on his estranged girlfriend while under court-supervised release. The government and Cabaniss filed legal briefs in support of their respective sentencing positions. The Court heard oral arguments on the issues at the sentencing proceeding on June 12, 1998, and ruled in favor of the government. Cabaniss was sentenced to a prison term of 3 months and ordered to pay \$700 in restitution. I handled this matter alone: drafting the charging document (an information), with only a few legal reference points because the statute was still relatively new and infrequently used; negotiating with Cabaniss's counsel concerning a plea; and litigating the sentencing issues.

Court: U.S. District Court for the Western District of Oklahoma

Judge: The Honorable Vicki Miles-LaGrange

Co-counsel: None

Defense counsel: Terry W. Tippens, Esq.
Fellers, Snider Blankenship Bailey
1000 N. Broadway Avenue, Suite 1700
Oklahoma City, Oklahoma 73102
(405) 232-0621
Counsel for Cabaniss

10. United States v. Phillip Bread, CR-02-131-A

This was a noteworthy public corruption prosecution, involving a nationally-known figure in the Native American community, Phillip Bread. Bread was indicted on August 6, 2002, for several public corruption crimes, including bribery under 18 U.S.C. § 666 and deprivation-of-honest-services mail and wire fraud, pursuant to 18 U.S.C. §§ 1341, 1343, 1346. Bread was a salaried employee of the Oklahoma State Department of Commerce, whose job primarily involved helping non-Indian businesses to build commercial relationships with Oklahoma Indian tribes, to further the economic development of the tribes. The indictment centered on the allegation that Bread solicited and accepted from non-Indian businesses money in exchange for

performing the same tasks for which he was paid a salary by the State of Oklahoma. Following my discussions and negotiations with Bread's defense counsel, Bread entered a plea of guilty. He did file a motion for departure downward from the otherwise-applicable imprisonment range under the U.S. Sentencing Guidelines, alleging that his Guidelines criminal history category overstated the seriousness of his past criminal conduct. The government filed a sentencing brief in opposition. The Court heard argument on the motion at the sentencing proceeding. It denied Bread's motion and sentenced him to a prison term of 12 months and one day. Bread did not appeal. I handled this matter alone: drafting the indictment, which involved the complex deprivation-of-honest-services theory; sheparding the indictment through the grand jury; negotiating with Bread's counsel concerning a plea; and litigating the downward-departure issue at sentencing.

Court: U.S. District Court for the Western District of Oklahoma

Judge: The Honorable Wayne E. Alley

Co-counsel: None

Defense Counsel: Frank R. Courbois
 Courbois, Cox & Staggs
 120 N. Robinson Avenue, Suite 2900
 Oklahoma City, Oklahoma 73102
 (405) 524-7507
 Counsel for Bread

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I served in a number of capacities in the U.S. Attorney's Office from which I gained invaluable managerial and administrative experience and substantive legal knowledge. For over eight years, I served as the Deputy Chief of the Criminal Division. In that position, I was responsible for assisting the Criminal Division's Chief in the management functions relating to approximately 26 Assistant U.S. Attorneys and 19 support staff. My responsibilities included helping in the formulation and implementation of prosecution guidelines concerning the kinds of cases that would be prosecuted, and assisting in the drafting and revising of important office documents, such as the office's standard plea agreement.

After the 9/11 tragedy, I served for over 2 ½ years as the office's Anti-Terrorism Coordinator. In this position, I coordinated the office's prosecutorial initiatives in the highly

sensitive areas of domestic and international terrorism. From April 1995 to February 1996, I had the honor of working on the prosecution team for the Oklahoma City bombing. I worked closely with investigators and other prosecutors in formulating investigative strategy, with an eye toward the ultimate prosecution of the two offenders, Timothy McVeigh and Terry Nichols.

In addition, I have been a very active member of the Oklahoma Bar Association (OBA), holding important leadership positions. Currently, I am an officer on the OBA's governing body, the Board of Governors. Specifically, I am the OBA's Vice President, taking office in January 2006. I am the first African-American in the history of the OBA to hold an officer's position on the Board of Governors. I previously served for three years as a Governor on the Board of Governors. In my OBA leadership roles, I have had an opportunity to work with and encourage the professional development of less experienced members of the legal profession. In recognition of my support for this group of lawyers, the OBA's Young Lawyers Division (YLD) elected me in 2005 a YLD Fellow.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

I participated in the Federal Employee Retirement System and contributed to the Thrift Savings Plan (TSP). When I left government service in August 2005, I left my contributed funds in the TSP. I will receive future benefits, according to the provisions of the TSP.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

During my initial service in the position to which I have been nominated, I will be particularly sensitive to cases involving my former firm or clients. Should I be confirmed as a District Judge, in any circumstance of potential, actual or perceived conflict of interest, I will adhere to the Code of Conduct for United States Judges and all laws and ethical standards.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

I have no plans to engage in outside employment. It has been my intention, however, to continue my unpaid service on one or more of the non-profit Boards with which I am currently affiliated, to the extent that such service is consonant with the Code of Conduct for United States Judges (e.g., Canon 5(B)) and all other ethical standards and laws.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

See attached Financial Disclosure Report

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached Net Worth Statement

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

No.

AO-10 Rev. 1/2004		FINANCIAL DISCLOSURE REPORT NOMINATION FILING		Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)
1. Person Reporting (Last name, First name, Middle initial) Holmes, Jerome A		2. Court or Organization District Court, N.D. Oklahoma		3. Date of Report 2/17/2006
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Nominee		5. Report Type (check appropriate type) <input checked="" type="radio"/> Nomination Date 2/14/2006 <input type="radio"/> Initial <input type="radio"/> Annual <input type="radio"/> Final		6. Reporting Period 1/1/2005 to 2/3/2006
7. Chambers or Office Address 20 N. Broadway, #1800 Oklahoma City, Oklahoma 73102		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.				

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ **NONE** - (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Director (Chair of Board of Directors)	City Rescue Mission
2. Director (Board of Directors)	Oklahoma Medical Research Foundation
3. Director (Board of Directors)	Oklahoma Academy for State Goals
4. Director (non-equity)	Crowe & Dunlevy, P.C.
5. Trustee (Board of Trustees)	Oklahoma City National Memorial Foundation
6. Vice President & Governor	Oklahoma Bar Association
7. Director (Board of Directors)	Oklahoma County Bar Association
8. Commissioner	American Bar Association, Commission on Homelessness & Poverty
9. Personal Representative	Estate # 1
10. Director (Former member of Board of Directors)	Prevent Blindness Oklahoma

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☒ **NONE** - (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Holmes, Jerome A

Date of Report
2/17/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)**A. Filer's Non-Investment Income**

☐ **NONE** - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2005	Crowe & Dunlevy, P.C., Salary	\$62,758
2.	2006	Crowe & Dunlevy, P.C., Salary	\$12,054
3.			

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. Dollar amount not required except for honoraria.)

☐ **NONE** - (No reportable non-investment income.)

	DATE	SOURCE AND TYPE
1.		

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ **NONE** - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.		Exempt

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Holmes, Jerome A	Date of Report 2/17/2006
--	-----------------------------

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)☐ **NONE** - (No such reportable gifts.)

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. <u>Exempt</u>		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)☐ **NONE** - (No reportable liabilities.)

<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1. <u>CitiBank</u>	<u>Promissory Note - Student Loan</u>	<u>J</u>
2. <u>Sallie Mae</u>	<u>Promissory Note - Student Loan</u>	<u>J</u>

FINANCIAL DISCLOSURE REPORT**Page 1 of 1**Name of Person Reporting
Holmes, Jerome ADate of Report
2/17/2006**VII. INVESTMENTS and TRUSTS** — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Amount Code 1 (A-H)	Type (e.g. div. rent. or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g. buy, sell, mortg., redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1. Bank of Oklahoma, Accounts	A	Interest	J	T	Exempt				
2. Estate # 1 (Sole Remaining Asset, Accounts)	D	None							

1. Income/Gain Codes:	A = \$1,000 or less	B = \$1,001-\$2,500	C = \$2,501-\$5,000	D = \$5,001-\$15,000	E = \$15,001-\$50,000
(See Columns B1 and D4)	F = \$50,001-\$100,000	G = \$100,001-\$1,000,000	H1 = \$1,000,001-\$5,000,000	H2 = More than \$5,000,000	
2. Value Codes:	J = \$15,000 or less	K = \$15,001-\$50,000	L = \$50,001-\$100,000	M = \$100,001-\$250,000	
(See Columns C1 and D5)	N = \$250,000-\$500,000	O = \$500,001-\$1,000,000	P1 = \$1,000,001-\$5,000,000	P2 = \$5,000,001-\$25,000,000	
	P3 = \$25,000,001-\$50,000,000		P4 = More than \$50,000,000		
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C7)	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Holmes, Jerome A	2/17/2006

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part VII, line 2: The sole asset of Estate # 1, bank accounts, was distributed to the heirs before the end of the reporting period, in or about the summer of 2005.

Part III.A: Filer's non-investment income for 2004 and part of 2005 includes U.S. Government Salary.

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Holmes, Jerome A	2/17/2006

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature

Jerome A. Holmes

Date

02/16/2006

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		4	099	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities-add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		26	677
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		148	454
Real estate owned-add schedule		171	273	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		43	500	Student Loans		20	624
Cash value-life insurance							
Other assets itemize:							
Federal Thrift Savings Plan		202	059				
				Total liabilities		195	755
				Net Worth		225	176
Total Assets		420	931	Total liabilities and net worth		420	931
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

Real Estate Owned

Personal residence

\$ 171,273

Real Estate Mortgages Payable

Personal residence

\$ 148,454

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

While in private practice at Steptoe & Johnson, in Washington, D.C., I handled a pro bono landlord-tenant matter, representing an elderly indigent client. The matter was litigated in approximately 2003-2004 in the Superior Court of the District of Columbia. To the best of my recollection, I devoted in the neighborhood of 100 hours to the matter. After significant depositions, we reached a satisfactory negotiated resolution of the matter with the landlord. During my tenure in the U.S. Attorney's Office, I was reluctant to become involved in the provision of legal services to the disadvantaged because of the possibility of conflicts of interest with my government employment. However, my concern for the legal and other needs of the economically disadvantaged is strong and long-standing. I have regularly made generous financial contributions to Legal Aid of Western Oklahoma and its successor organization, Legal Aid of Oklahoma. Legal Aid has been directly involved in providing legal services in civil matters to the indigent. I also am a Fellow of the Oklahoma Bar Foundation (OBF), the charitable arm of the Oklahoma Bar Association. Fellows pledge to annually contribute at least \$100 to the OBF for 10 years. The OBF awards grants for a variety of worthwhile law-related projects, including those involving the provision of legal services to Oklahoma's poor. Moreover, since 2003, I have served on the Board of Directors of City Rescue Mission, the largest provider in Oklahoma of emergency-shelter and other social services to the homeless. Currently, I am Chair of City Rescue Mission's Board. In addition, since entering private practice in August 2005, I have secured a position on the ABA's Commission on Homelessness & Poverty. During my period in private practice, I anticipate being involved in the direct provision of legal services to the disadvantaged.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

For more than 2 years (2003 to 02/2006), I was a member of the Men's Dinner Club of Oklahoma City. The Club is composed of business leaders, lawyers, judges, physicians, and members of other professions. Club members meet monthly throughout much of the

year to socialize, enjoy dinner, and hear entertaining or thought-provoking speakers. To the best of my knowledge, the Club's membership is restricted to men. I have been the subject of racial prejudice during my life and abhor prejudice in all its forms. I did not perceive the Club as practicing invidious discrimination. Nevertheless, I resigned from the Club, effective February 2, 2006, to avoid any possible suggestion of impropriety.

I was a member of an all-male fraternity in college, Theta Chi. I was a member from the beginning of 1980 through the school year of 1983.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

I am not aware of the existence, or operation of, a selection commission with respect to the judicial post for which I have been nominated. I did not appear before such a commission. I submitted my resume to the two Oklahoma senators, along with a cover letter expressing my interest in being nominated by President Bush for a judicial post. I met with Senator Tom Coburn on two occasions. I spoke on the telephone with Senator Inhofe approximately three times. Senator Inhofe had previously interviewed me personally in 2001, when I sought to be appointed U.S. Attorney for the Western or Northern District of Oklahoma. Subsequently, I was interviewed by representatives from the White House Counsel's Office and the Department of Justice. After undergoing a background investigation and completing nomination paperwork, the President forwarded my nomination to the Senate on February 14, 2006.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

The judiciary has an important but limited role to play in our scheme of government. It should interpret and apply the laws with the highest degree of intelligence, integrity, and impartiality. The judiciary should not, however, attempt to usurp the role of the political branches through, for example, conceiving and implementing public policies from the bench, or issuing rulings that go beyond the resolution of the dispute before the court to impose wide-ranging obligations on societal groups. The work of the courts is more likely to be viewed as legitimate by the public when the judiciary does not overstep the boundaries of its role in our governmental system.

The role of the federal judiciary is set out in the United States Constitution. The Constitution establishes the three branches of government and gives each a separate realm of power. The legal doctrine of separation of powers recognizes and affirms this aspect of the Constitution. Any contravention of the doctrine of separation of powers consequently impairs the constitutional plan for the functioning of our government. Judges who might seek to make law, not interpret it, usurp the legislative power invested by the Constitution in Congress.

In our federal system, courts are limited to the resolution of cases or controversies by the Constitution. Furthermore, judges should apply principles of self-restraint in determining whether matters fall fairly within their jurisdiction. Judges should not take a loose view of jurisdictional requirements such as standing and ripeness. Such an approach is contrary to law, and, in some instances, it may contradict the will of Congress that has deliberately defined in a particular setting the appropriate preconditions for a lawsuit. Lastly, judges must follow the well-established principle of *stare decisis*, which generally requires courts to respect legal precedent and, in particular, requires inferior courts to follow binding precedent. When judges attempt to solve societal problems that go beyond the concrete legal disputes before them, there is a significant risk that they will stray from the path of prior legal decisions.

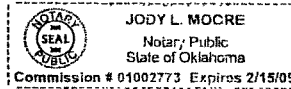
AFFIDAVIT

I, Jerome A. Holmes, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

February 6, 2006
(DATE)

Jerome A. Holmes
(NAME)

Jody L. Mocre
(NOTARY)



Senator COBURN. Thank you.
Mr. Jordan?

STATEMENT OF DANIEL P. JORDAN III, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

Mr. JORDAN. Thank you, Senator. I, too, would like to thank the President for this tremendous opportunity. I am humbled by it and excited for it.

I also want to thank Senators Lott and Cochran. They have meant a lot to me and my family for years, and it was a real pleasure working here in the Senate for Senator Lott.

I feel like you know my family well at this point, but I will introduce them anyway. This is my wife, Teri; my daughter, Anna, who is 8; my mother, Lou Ellen; and my father, Dr. Daniel Jordan. My son, Robert, is 5 and he is not with us today. I thought this would go more smoothly if he stayed at home.

[Laughter.]

Mr. JORDAN. But I, too, appreciate this opportunity and look forward to answering your questions. And I am sorry, I do want to also thank two friends, former colleagues, Shelly McCain and Jennifer Hawks Bland, who surprised me by showing up today. I am very pleased to see them.

Thank you.

[The biographical information of Mr. Jordan follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Daniel Porter Jordan III

2. Address: List current place of residence and office address(es).

Residence: Madison, MS 39110

Office:

Butler, Snow, O'Mara, Stevens & Cannada, PLLC
17th Floor AmSouth Plaza
210 East Capitol
Jackson, MS 39225

3. Date and place of birth.

November 20, 1964
Fort Bragg, NC

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Teri Dallas Jordan
Homemaker

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

University of Virginia Law School: August 1990 through May 1993, JD received May 23, 1993

University of Mississippi: August 1983 through June 1987, B.B.A. in Economics received August, 1987.

University of Virginia: Summer 1985, no degree.

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

U.S. Department of the Interior
18th & C St. NW
Washington, DC 20240
10/1987 - 12/1987
Economic Analyst

Trent Lott for Mississippi
Building destroyed after campaign
Jackson, MS
1/1988 - 12/1988
Driver
Youth Coordinator

U.S. Senator Trent Lott
487 Russell Building
Washington, DC 20510
1/1/1989 - 8/1/1990
Legislative Assistant

Butler, Snow, O'Mara, Stevens & Cannada
210 East Capitol
Jackson, MS 39201
5/1991 - 7/1991
Summer Associate

Watkins, Ludlum & Stennis
633 West State Street
Jackson, MS 39205
7/1991 - 8/1991
Summer Associate

Mays & Valentine
1111 East Main St.
Richmond, VA 23208
5/1992 - 7/1992
Summer Associate

McGuire Woods, Battle & Boothe
Court Square Building
Charlottesville, VA 22903
7/1992-8/1992
Summer Associate

Butler, Snow, O'Mara, Stevens & Cannada
210 East Capitol
Jackson, MS 39201
9/17/1993 - 12/31/1999- Associate Attorney
1/1/2000 - Present- Equity Member

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

University of Mississippi Hall of Fame
Omicron Delta Kappa
Mortar Board
Mississippi Business Journal "Top 40 under 40"

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association
Tort Trial & Insurance Practice Section

Mississippi Bar Association:
Litigation Section: Secretary/Treasurer, July 2005 - Present; Board of Directors, July 2002 - Present (Will chair section in 2007)
District Nominating Committee, 7th Circuit Court District (1999)
"We the People" (national high school competition to

teach students about the United States Constitution)
 Mississippi Co-Chairman 1995
 National Finals Judge 1995
 Special Prosecutor for Mississippi Board of Bar
 Admissions (1996)

Mississippi Young Lawyers Division
 ABA Young Lawyers Division National Convention Delegate
 (2002)
 Board of Directors (ex officio) 1998-1999
 Mississippi Moot Court Competition Judge
 Regional Finals 1999
 State Finals 1999

Hinds County Bar Association:
 Board of Directors 1997-1999
 Bench and Bar Relations liaison 1997-1998
 Legal Problems of the Homeless liaison 1997-1998
 Evening Honoring the Judiciary Committee 1999
 "The People's Law School"
 Committee member
 Lecturer on employment law
 Speakers Committee 2006

Jackson Young Lawyers Association
 Past President 1999-2000
 President 1998-1999
 Vice President 1997-1998
 Board of Directors 1995-1997

International Association of Defense Counsel

Southern Law Network- Litigation Representative

Mississippi Volunteer Lawyer Project:
 Coordinator, Stewpot Legal Clinic (homeless initiative)
 2005 - Present

Special Counsel to the City of Jackson (pro bono
 representation of the City in litigated matters)

Hurricane Katrina Disaster Relief Program, Biloxi,
 Mississippi

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

To the best of my knowledge, the only organizations to which I belong that are active in lobbying before public bodies are the American Bar Association and the Butler, Snow, O'Mara Stevens & Cannada PAC.

Other organizations to which I belong include:

Christ United Methodist Church
Madison County Republican Party - Chairman 2001-04
Madison County Chamber of Commerce
University of Virginia Alumni Association
University of Mississippi Alumni Association
University of Mississippi Central Mississippi Alumni Board

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States Court of Appeals for the Fifth Circuit.
October 7, 1993

United States District Court for the Northern District of Mississippi. October 12, 1993

United States District Court for the Southern District of Mississippi. September 30, 1993

Supreme Court of Mississippi. September 30, 1993

United States District Court for the Eastern and Western Districts of Arkansas.

I was admitted to the Arkansas district courts August 12, 1999. Those districts allow out-of-state lawyers to be admitted with a nominal yearly fee. I was admitted for one case and have not had a case since. I am not sure if I have maintained it each year, but I believe that I am currently admitted. Other than that, there have been no lapses in my memberships.

2. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

"Stewpot Legal Clinic," *The Mississippi Lawyer*, 4th Quarter 2004.

"Court Affirms Oprah's Victor," *The Fourth Estate*, 2nd Quarter 2000.

"Mississippi Open Meetings Act-Does it Apply?" *The Fourth Estate*, 4th Quarter 1999.

"Reporter Prevails in Contempt Case," *The Fourth Estate*, 2nd Quarter 1999.

"Mississippi's At-Will Employment Doctrine: Status of the Law and Current Exceptions," *Mississippi Employment Law Practice Handbook*, 1999

Mississippi Code Annotated, Index. I edited several sections of the index one year, but I do not recall when.

In addition, I wrote two President's columns for the *Jackson Young Lawyers Newsletter* in 1998-1999. I have not been able to locate the first column; the second was published in May 1999.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

I am in excellent health. My last physical examination was March 2, 2006.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never been a judge.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I have never been a judge.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not serve as a law clerk.

2. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Since September 17, 1993, I have practiced with Butler, Snow, O'Mara, Stevens & Cannada, PLLC, 210 East Capitol Street, Jackson, Mississippi. I was an associate attorney 1993 through 1999 and became a full equity member of the PLLC January 1, 2000.

- b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

For roughly the first two years of practice, I focused on employment law. Around 1996 I moved into general litigation. Around 2000 the firm adopted practice groups, and I have since been assigned to the products liability group. However, I would describe my practice as more of a general practice with approximately 30% of my work focused on defense of manufacturers in products liability claims. Due to our firm's representation of certain clients on a regional basis, I have handled products cases in ten states. In the last several years, I have had significant mediation experience and have at times been brought into mature cases to mediate them for the client. In general, I supervise a number of associates on smaller cases while serving as lead counsel on larger cases often with multi-million dollar exposure.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

Initially, I defended employers (some large, some small) in employment discrimination cases in federal court and before the Equal Employment Security Commission. My products liability work is generally on behalf of manufacturers or sellers, and many of them manufacture material handling equipment or recreational vehicles. My other work includes the defense of trucking companies in motor vehicle accidents, various insurance related clients in bad faith and other disputes as well as insurance coverage opinions, retailers in false arrest or premises liability

suits, and some businesses in breach of contract actions. I have also had a number of defamation cases and worked extensively on two defamation cases for a local newspaper. There was also a time when I was one of the attorneys in my firm working for the Mississippi Press Association which included, among other things, answering "hotline" questions from member papers around the state. Finally, I have had experience handling and working on multi-plaintiff toxic tort cases.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appear in court occasionally.

2. What percentage of these appearances was in:
 (a) federal courts: 35%
 (b) state courts of record: 65%
 (c) other courts.

3. What percentage of your litigation was:
 (a) civil: 99.9%
 (b) criminal: .1%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Sole Counsel: 2
 Chief Counsel: 6
 Associate Counsel: 3

5. What percentage of these trials was:
 (a) jury: 55%
 (b) non-jury: 45%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of

each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
 - (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
 - (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *Vernon D. and Janice Baggett, individually and on behalf of their minor children, Mary Baggett, Vernice Baggett, Jamie Baggett and Joe Baggett and thos other individuals listed herein Exhibit "A" v. Cheminova, Inc., A Delaware Corporation, and Cheminova Agro A/S, Dock Eastman, Paul Walls, McMillan And Harrison Fertilizer Company, Inc., Alabama Farmers' Cooperative, Inc., and Terra International, Inc.*
- (a) 07/29/99 - 12-6-04
 - (b) In the First Judicial District of Hinds County, Mississippi, Honorable James Graves
 - (c) Plaintiffs' Attorney
Judy M. Guice, Esq.
Post Office Box 1919
Biloxi, Mississippi 39533-1919
(228) 374-9787
- Co-Defendant
Barry Campbell
Baker, Donelson, Bearman & Caldwell
4268 I-55 North
Jackson, Mississippi 39211
(601) 351-2400

Our client Terra Industries distributed the agricultural pesticide Methyl Parathion. Sprayed outside, the chemical is safe and will break down rapidly in sunlight. Unfortunately, two independent exterminators unlawfully used Methyl Parathion to spray homes on the Mississippi and Alabama gulf coasts for roaches. The environmental cleanup of the homes directed by the EPA and the Mississippi Department of Environmental Quality made national news, and shortly thereafter nearly 700 plaintiffs

brought suit in a number of civil actions filed in Alabama and Mississippi, 469 of which were included in the referenced case (I also handled the other cases, but this was the most significant set).

As with any case of this size and complexity, I did not work alone. Initially, I started as the number two attorney on the case with my partner Bobby Miller, but I took most of the depositions (which occurred all over the country and included dozens of plaintiffs, fact witnesses and expert witnesses). I was also lead author on most or all pleadings and briefs, and generally handled the cases. While my partner remained involved, over time I took over the leading role and ultimately mediated and settled the *Baggett* case alone. The terms of the settlement are confidential.

2. *Tammie Wilkinson, Individually and on behalf of all Wrongful Death Beneficiaries of Stacye M. Wilkinson vs. Reuben Jackson, et. al.*

(a) 08/06/02 - 1/06

(b) Originally filed in the Circuit Court of Yazoo County, Mississippi before the Honorable Janie Lewis. The case was removed to the United States District Court for the Southern District of Mississippi but remanded by the Honorable David Bramlette. Once in state court, it was re-assigned to a retired judge also named Lewis. Approval of the settlements occurred in the Chancery Court of Madison County before the Honorable Bill Lutz. Finally, the indemnity portion of the case was arbitrated before an AAA panel chaired by former United States District Court Judge Suzan Gatzendanner.

(c) Counsel for Plaintiffs

O. Stephen Montagnet III, Esq.
McCraney, Nosef, Montagnet & Sanford
11 Northtown Drive, Suite 220
Post Office Box 16368
Jackson, Mississippi 39236-6368
(601) 957-7811

Counsel for Co-Defendant TSI

Richard T. Lawrence, Esq.
Watkins & Eager

400 East Capitol Street, Suite 300
Post Office Box 650
Jackson, Mississippi 39205-0650
(601) 948-6470

Counsel for Co-Defendant PFS

James W. Shelson, Esq.
Phelps Dunbar, LLP
Suite 500, Skytel Centre
200 South Lamar Street
Post Office Box 23066
Jackson, Mississippi 39225-3066
(601) 352-2300

Walker W. Jones III, Esq.
Gerry Bufkin, Esq.
Baker Donelson Bearman & Caldwell
Post Office Box 14167
Jackson, Mississippi 39236-4167
(601) 351-2413

Counsel for Co-Defendant Vickery

Eugene R. Naylor, Esq.
Charles E. Ross, Esq.
Wise, Carter, Child & Caraway
401 East Capitol Street, Suite 600
Post Office Box 651
Jackson, Mississippi 39205-0651
(601) 968-5500

Counsel for BDL

David Dunbar, Esq.
Dunbar Monroe
1855 Lakeland Dr. Suite R-201
Jackson, MS 39216
(601) 366-1805

Reuben Jackson was an independent truck driver who purchased an insurance policy written by my client the Insurance Corporation of Hanover (ICH). Jackson financed his policy through a company named PFS. Due to an apparent paperwork glitch, PFS exercised its power of attorney and mistakenly cancelled Jackson's policy. ICH's agents received and processed the faulty cancellation.

Shortly thereafter, Jackson was involved in a fatal accident that killed two Mississippi Department of Transportation employees. Jackson dutifully notified ICH's third-party administrator (TPA) BDL but BDL refused to provide Jackson a defense, relying on the pre-accident cancellation.

When Jackson failed to answer the complaint, the judge entered a \$6.7 million default judgment. Plaintiffs then amended their complaint to enforce the judgment against ICH, PFS, and others, and further obtained an assignment of Jackson's bad faith claims against ICH. I worked largely alone and as lead counsel.

My client ICH and the premium financing company PFS were the two target defendants, and the potential liability of each rested on open questions of Mississippi law. Significantly, the law was not clear as to whether the policy was effectively cancelled. There were nearly 300 pleadings filed in this matter.

ICH ultimately reached a settlement with the plaintiffs following mediation. The settlement is confidential. After ICH settled, PFS attempted to block the settlement and amend its answer to file a third-party claim against ICH which would bring ICH back into the case. I successfully defeated PFS's motion.

After settling with the plaintiffs, I pursued an indemnity claim against ICH's TPA BDL for amounts paid in settlement plus ICH's fees and expenses. BDL argued that it owed nothing. Illinois law applied to the indemnity claim due to the choice of law provision in the parties' contract.

I tried the arbitration with my partner Phil Abernethy in 2005. A three judge panel of arbitrators (including a former federal judge) found that BDL breached its contract with ICH and caused the \$6.7 million default judgment. The panel awarded 70% of the total damages ICH sought (reduced 30% for the fault of another ICH agent). The arbitration award was substantially higher than BDL's final pre-hearing settlement offer.

3. *Robertson v. National Union Fire Insurance Company of Pittsburgh, Pennsylvania:*

(a) 10/25/00-06/09/05

(b) In the First Judicial District of Jasper County, Mississippi; before the Honorable Robert Evans

(c) Attorneys for Plaintiffs

Charles G. Copeland, Esq.
Doug Sweat, Esq.
Copeland, Cook, Taylor & Bush
Post Office Box 6020
Ridgeland, Mississippi 39158
(601) 856-7200

Robert D. Gholson, Esq.
Craig N. Orr, Esq.
Cholson & Orr
Post Office Box 6523
Laurel, Mississippi 39441-6523
(601) 425-0400

Rance N. Ulmer, Esq.
Post Office Box 1
Bay Springs, Mississippi 39422-0001
(601) 764-3157

Gordon J. McKernan, Esq.
McKernan Law Firm
8710 Jefferson Highway
Baton Rouge, Louisiana 70809
(225) 926-1234

The Robertsons were in a serious car accident that left their young son brain damaged and wheelchair bound. The plaintiffs and original defendants reached an eight figure settlement. The parties also agreed to a subsequent bench trial to determine whether additional coverage existed under a disputed umbrella policy worth just under \$10,000,000. If so, then plaintiffs would receive the policy limits of the disputed policy. We were hired after the initial settlement by American International Group to defend National Union Fire Insurance Company of Pittsburgh, Pennsylvania.

The case involved a complicated fact pattern and raised legal issues under both Mississippi and Florida law. In the most general terms, the question was whether the carrier had received legally sufficient notice that the insured should be added to the list of subsidiaries on the parent corporation's umbrella policy.

As with many cases of this magnitude, I was not the only attorney on the file, and this was a team effort. However, I was responsible for most of the day-to-day handling of the case, took most of the depositions, argued motions, drafted the pleadings

and briefs, and tried the case with my partner Bobby Miller who took the lead at trial. After an unfavorable ruling from the trial judge, we appealed to the Mississippi Supreme Court. I was the primary author on the brief and argued the appeal before a three judge panel.

After the argument, my partner and I mediated the case although I took the leading role in the mediation. We settled for a confidential amount that was approximately one half of the plaintiffs' pre-trial position. The case settled before the Mississippi Supreme Court issued its opinion.

4. *Miskelly's Furniture Warehouse v. Benefit Management Systems, Inc., Equity RE, Standard Life and Accident Insurance Company, Inc. and Tom brown d/b/a Risk Selection Services, LLC*

(a) 04/02/01-09/01/04

(b) In the Circuit Court of Rankin County, Mississippi; the Honorable Samac Richardson

(c) Counsel for Plaintiffs

Cliff Johnson, Esq.
Doug Minor, Esq.
Pigot, Reeves, Minor and Johnson
775 N Congress St
Jackson, MS 39225
(601) 354-7854

Counsel for Co-Defendants

William W. McKinley, Jr., Esq.
Whitman B. Johnson III, Esq.
Currie, Johnson, Griffin, Gaines & Myers, PLLC
Post Office Box 750
Jackson, Mississippi 39205-0750
(601) 969-1010

J. Leray McNamara, Esq.
Copeland, Cook, Taylor & Bush
Post Office Box 6020
Ridgeland, Mississippi 39158
(601) 856-7200

Brian A. Montague, Esq.

Law Offices of Brian A. Montague
Post Office Box 18109
Hattiesburg, Mississippi 39404-8169
(601) 450-1111

Standard Life placed an insurance treaty for an employee benefits plan at Miskelly's Furniture. During the first 30 days of the plan, the young son of one of Miskelly's employees became seriously ill, and it appeared that he would become ventilator dependant. Miskelly's initial premium payment was timely sent to the local agent but due to a miscommunication was not forwarded to Standard Life's third-party administrator (TPA). When news of the significant claim reached the TPA, he promptly cancelled the policy for lack of payment. He then stood by that cancellation when the agent informed him that the payment had been made on time but was sent to the agent instead of the TPA.

Miskelly's sued my client Standard Life, its TPA, and the local agent in the Circuit Court of Rankin County, Mississippi for breach of contract, bad faith and punitive damages. The demand was eight figures.

The case raised serious legal issues with respect to the validity of the premium payment (i.e., would timely payment to the agent rather than the TPA suffice).

I handled the suit essentially on my own and eventually negotiated a confidential settlement with the plaintiff. The settlement included an assignment of the plaintiff's claims against the TPA. Standard Life retained a plaintiff's lawyer who pursued the assigned claim and ultimately received a seven figure verdict that fully indemnified Standard Life.

5. *Roger Brandenburg, Individually and as Natural Father of Kelli Brandenburg, Deceased, and Kay Rogers, Individually and as Natural Mother of Kelli Brandenburg, Deceased, William Gabriel Rigdon, a minor, by and through his Mother and Guardian, Deborah Smith and Walter H. McWilliams, Individually and as Conservator for Donald Glenn McWilliams v. Toni Beasley, Corr-Williams Wholesale Co. of Meridian, Nissan North America, Inc. f/k/a Nissan Motor Corporation in U.S.A., Nissan Motor Company, Ltd. And Doe Defendants A through C consolidated with Robin Rigdon v. Toni Beasley, Corr-Williams Wholesale Co. of Meridian, Nissan North America, Inc. f/k/a Nissan Motor Corporation in U.S.A., Nissan Motor Company, Ltd. and Doe Defendants A through C*

- (a) 05/01/02-10/05/05
- (b) In the Circuit Court of Rankin County, Mississippi, the Honorable William Chapman
- (c) Attorneys for Plaintiffs

Michael S. Allred, Esq.
The Allred Law Firm
Post Office Box 3828
Jackson, Mississippi 39216
(601) 713-1414

Ottawa E. Carter, Esq.
P.O. Box 3324
Jackson, MS 39207
(601) 987-8188

Vicki R. Slater, Esq.
Vicki R. Slater, Attorney-at-Law, P.A.
Post Office Box 23981
Jackson, Mississippi 39225-3981
(601) 987-8184

Clarence McDonald Leland, Esq.
C. M. Leland, Ltd.
Post Office Box 1466
Brandon, Mississippi 39043
(601) 825-7978

Attorney for Co-Defendant Dismissed Before Trial

Mark D. Jicka, Esq.
Watkins & Eager
Post Office Box 650
Jackson, Mississippi 39216
(601) 948-6470

Kelly Brandenburg was a 16-year-old former cheerleader whose vehicle was struck broadside in front of her home by a delivery van owned by my client. Brandenburg was killed instantly, and two teenage boys in her car suffered moderate to severe brain injuries and other severe physical injuries. A fourth teenager, the sister of one of the boys, witnessed the accident and alleged emotional distress.

Plaintiffs claimed a defect in Brandenburg's car caused it to stall for several minutes as she left her driveway and that

the van driver failed to take evasive action. The van driver testified that Brandenburg pulled out of the driveway at the last second.

On the eve of trial, the van driver's employer hired us to take over and defend the case. Initially, I handled the case essentially alone, obtained a continuance, conducted additional discovery, and engaged in substantial motion practice. I then served as lead trial counsel and brought in my partner Bobby Miller to assist. The trial lasted eight days and included numerous fact witnesses and 8 expert witnesses.

Plaintiffs asked the jury for a substantial verdict (\$15,000,000 I believe). The jury returned a defense verdict after 50 minutes of deliberation.

6. *Ronald Higgins and Brenda Higgins, husband and wife v. Link-Belt Corporation, Blue Circle Inc. d/b/a Blue Circle Cement, L.B. Smith, Inc. and Fictitious Party Defendants Nos. 1-37*

(a) 02/07/00- 02/09/2001

(b) In the Circuit Court of Jefferson County, Alabama,
Judge Scott Vowell

(c) Plaintiffs' Counsel
Robert B. Roden, Esq.
Shelby & Cartee
2956 Rhodes Circle
Birmingham, Alabama 35205
(205) 933-8383

Local Counsel
John Bolus, Esq.
Maynard, Cooper & Gale, P.C.
2400 AmSouth/Harbert Plaza
1901 Sixth Avenue North
Birmingham, Alabama 35203-3217
(205) 901-5069

Mr. Higgins' hand was crushed between the moving parts of a large crane as he helped retract the outriggers. Ultimately, the hand was amputated, and he sued the manufacturer Link-Belt in the Circuit Court of Jefferson County, Alabama. I handled the case almost exclusively pre-trial and tried it with my partner Lee Davis Thames, the originating attorney. Thames took the lead at trial although we split the responsibilities evenly. I opened

and examined the plaintiff, one expert and a fact witness. At the end of the trial, Plaintiffs asked the jury for \$15,000,000. The jury returned a defense verdict.

7. *Hicks, et al. v. Washington, et al*, No. 251-01-1001CIV

(a) 01/18/02-11/16/04

(b) In the Circuit Court of Hinds County, Mississippi, the Honorable W. Swan Yerger.

(c) Plaintiffs' Counsel
 Evelyn Tatum Portie, Esq.
 Tatum & Portie, P.C.
 386 Lakeway Drive
 Brandon, Mississippi 39047
 (601) 825-0010

Counsel for Co-Defendant
 Carlton Reeves
 Pigot, Reeves, Minor and Johnson
 775 N Congress St
 Jackson, MS 39225
 (601) 354-7854

The plaintiff was shopping with her seven children in a Family Dollar Store. After a few minutes, a heated and profane discussion with the store manager occurred over the children's behavior, and the plaintiff began throwing merchandise at the manager who told the plaintiff to leave. Although she left temporarily to put her children in her van, she returned and the argument resumed. At that point, the manager again asked the plaintiff to leave, she refused, and he picked her up and essentially carried her outside. A physical altercation followed with the plaintiff ripping the manager's shirt off, scratching him and breaking his two-way radio headset. The manager then put the plaintiff against the hood of her van. According to him, he placed her on the hood and held her down while asking her to calm down. According to her, he slammed her on the hood causing physical injuries and then proceeded to choke her in front of her children. The mother and five oldest children sued.

The case was originally handled by another firm, and there was a settlement demand of around \$20,000. However, during the manager's deposition, he agreed with the plaintiffs' attorney that he had his hands "around her neck." After the deposition,

the manager tried to explain that he did not mean his hands were literally on plaintiff's neck but that they were near her neck as he held her down. In either event, the damage was done and the original demand was withdrawn for a substantial seven figure demand.

After the manager's deposition (the first in the case), Family Dollar Store transferred the case to me, and I handled it with limited associate help. After substantial discovery and motion practice, we successfully mediated the case before former Hinds County Circuit Court Judge Robert Gibbs.

8. *Bettina Taylor, Individually and as Next Friend of Lateesha Taylor, a Minor, et al. v. Continental Tire North America, Inc., et al.* Cause No. 251-04-482 CIV

(a) 10/7/2004 - 9/2005

(b) In the United States District Court for the Southern District of Mississippi, the Honorable Henry Wingate

(c) Plaintiffs' Counsel
Ottawa Carter
P.O. Box 3324
Jackson, MS 39207
(601) 987-8188

Co-Defendant's Counsel
Robert Walker
Baker, Donelson, Bearman & Caldwell
4268 I-55 North
Jackson, Mississippi 39211
(601) 351-2400

Ms. Taylor, her elderly mother, and two children were traveling on an interstate highway in a Ford Expedition when the right rear tire blew. The tire was manufactured by my client Continental Tire North America, Inc. When the tire blew, the plaintiffs' SUV left the road and flipped several times injuring everyone but Ms. Taylor's seven year old daughter. The grandmother had the longest stay in the hospital and perhaps the most serious injuries, but all claimed permanent injuries.

The tire had been the subject of a nationwide recall, and Ford had experienced a number of significant roll-over cases. The complaint sought compensatory and punitive damages. I removed the case to federal court, conducted investigation and limited

discovery, mediated and then settled.

9. Donaldson Air Duct Litigation:

Cannon Hill Trucking, Inc. v. Western Star Trucks, a wholly owned subsidiary of Freightliner, LLC; Burroughs Diesel, Inc.; and Donaldson Company, Inc., U. S. District Court, Southern District, Hattiesburg Division, Civil Action No. 2:03-CV-184PG

Terry Lee, d/b/a Lee Logging, et al. v. Western Star Trucks, et al., U. S. District Court, Southern District, Hattiesburg Division Civil Action No. 5:03cv422-DCB-JCS

(a) Cannon Hill: 12/31/03 - 10/18/05; Lee Logging: 12/27/02 - 10/18/05

(b) Cannon Hill was before the Honorable Charles Pickering, and Lee was before the Honorable David Bramlett.

(c) Plaintiff's Counsel for Both Cases

Nobel Lee, Esq.
P. Shawn Harris, Esq.
Lee & Lee
Post Office Box 370
Forest, Mississippi 39074-0370
(601) 469-2721

William "Bill" T. May, Esq.
Logan & May, P.A.
Post Office Box 218
Newton, Mississippi 39245
(601) 683-7888

Co-Defendants
David L. Ayers, Esq.
Robert B. Ireland, III, Esq.
Watkins & Eager, PLLC
Post Office Box 650
Jackson, Mississippi 39205
(601) 948-6470

Ken Adcock, Esq.
Adcock & Morrison
Post Office Box 3308
Ridgeland, Mississippi 39158
(601) 898-9887

Dorchester Dirt Co., Inc. v. Western Star Trucks, et al.; C/A No. 2:04222758 18; in the United States District Court for the District of South Carolina, Charleston Division

W. Frazier Construction, Inc. v. Western Star Trucks, et al.; C/A No. 2:02222759 18; in the United States District Court for the District of South Carolina, Charleston Division

(a) Both suits 10/08/04 - 12/15/05

(b) The Honorable David C. Norton in the United States District Court for the District of South Carolina, Charleston Division

(c) Opposing Counsel
George J. Kefalos
3 State Street
Charleston, South Carolina 29401
(843) 722-6612

Co-Defendants
David L. Ayers, Esq.
Robert B. Ireland, III, Esq.
Watkins & Eager, PLLC
Post Office Box 650
Jackson, Mississippi 39205
(601) 948-6470

Donaldson manufactures air intake ducts (pipes) for logging and other trucks. The ducts transfer air from external air filters to the turbo chargers of the engines. Plaintiffs in each of these cases alleged that the ducts failed, allowing debris into the engines causing substantial engine damage. The *Cannon Hill* and seven *Lee Logging* plaintiffs sought \$100,000 in compensatory and \$75,000,000 in punitive damages per plaintiff. The plaintiffs in the South Carolina federal suits sought an unspecified amount in compensatory and punitive damages.

Although we assembled a team, I took over the near exclusive handling of these cases for Donaldson in Mississippi and South Carolina. The cases were significant for Donaldson due to the demands, the venues, and because they appeared to have been copy-cats of a case it settled in Alabama. The company did not want to encourage even more litigation.

The defendants removed *Cannon Hill* to federal court based on diversity jurisdiction and thereafter moved to dismiss because the plaintiff failed to list the suit in a pending bankruptcy petition. Plaintiffs confessed the motion, and the federal court granted summary judgment based on judicial estoppel.

Defendants removed Lee Logging and quickly obtained voluntary dismissals from five of the seven plaintiffs. The remaining two plaintiffs settled; Donaldson paid only \$2,500 per truck.

I also defended Donaldson in the South Carolina cases as lead counsel. After some discovery and inspection of the trucks, we were able to settle those cases through an informal mediation with plaintiffs' counsel. The terms are confidential.

Finally, Donaldson also faces a class action in Alabama related to these same type claims. Alabama counsel is taking the lead on that case, but I am working closely with him.

10. *Jana M. Miller v. Jerry Davis Stringer, et al.*, No. CI-2003-00031(1)

(a) 2/6/03 - 10/4/04

(b) The Honorable Robert B. Krebs, Circuit Court of Jackson County, Mississippi

(b) Plaintiff's Lawyer
 Russell S. Gill, Esq.
 638 Howard Avenue
 Biloxi, MS 39530
 (228) 432-0025

I was asked by the client to take over the handling of this suit which involved a serious collision between the plaintiff's van and an 18-Wheeler owned by my client. Plaintiff, a young single mother, was left permanently brain damaged and had other significant physical injuries. I eventually mediated the case for the client and resolved the suit. The amount of the settlement is confidential.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters

that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Four areas of significant legal activities I have pursued other than my extensive litigation experience include the following: 1) experience with alternative dispute resolution (ADR); 2) the special prosecutors program; 3) my bar and mentoring activities; and 4) my leadership positions within the firm.

1. In addition to the cases listed in response to Question 18, I have routinely used mediation and at times arbitration to resolve both complex and more routine disputes. I have also used mediation before suit was even filed where the issues seemed clear but the parties could not agree on the value. Among the types of cases I have mediated are claims based on breach of contract, disputed insurance coverage, truck and other vehicle accidents, product liability, premises liability, assault/battery, and false arrest/false imprisonment.

2. Several years ago, I began looking for ways to get our younger litigators into the courtroom. In 2005, I worked out an agreement with the City of Ridgeland, Mississippi to allow Butler Snow lawyers to help try misdemeanor cases in city court. I was admitted as a special prosecutor on three of four occasions. Because all of those cases pled out, the program did not offer sufficient trial experience. I then turned my attention to the City of Jackson. I was already coordinating our firm's involvement in the "Capitol Relievers Program" which teamed private firms with the City Attorney's Office to provide pro bono legal assistance in civil cases against the City. Now I am working with the City Prosecutor, so litigators in our firm will take turns trying criminal cases.

3. Through the various bar associations and within my firm, I have played an active role in mentoring young lawyers (and future lawyers). I served on the planning committee and as faculty for the People's Law School (which provided classes to the general public on law related topics); I judged various moot court competitions including local, state and national competitions; and I have served as a mentor for a number of summer law clerks and associates. Finally, I have been extremely active within the firm in internal training programs for associates. For example, I developed internal reference materials; participated in internal training; and gave formal presentations on courtroom

technology, use of third-party focus groups, pro-bono service, and on the firm's philosophy.

4. I have been fortunate to serve in a number of leadership positions within the firm. I have chaired the firm's Professional Development Committee, Summer Associates Committee, and the Activities Committee. I also served for a number of years on the Recruiting Committee. In 2004, I was elected to the Executive Committee (the firm's management committee) and ran unopposed for re-election in 2006. In addition to the Executive Committee, I worked on each of the following committees in 2005: the Equity Committee (which determines the income levels of all equity members), the Strategic Planning Committee (which adopted a new strategic plan with the assistance of outside consultants), and the Governance Task Force (an ad hoc committee constituted to address a difficult internal dispute between the firm's then presiding Chairman and the Executive Committee). This final committee produced a number of recommended changes to our PLLC agreement that were adopted by the PLLC members. Finally, I continue to serve as one of our firm's two litigation representatives to the Southern Law Network.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

If confirmed, I will receive no deferred income from the firm. I will receive my percentage share of any undistributed income then existing and a refund of my contributions to the firm's capital account (which by then should be slightly over \$12,000). My retirement plans are personal 401(k)s.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

Maintaining trust in the judiciary is essential; the public must believe that judges are fair and that the playing field is level. If confirmed, I obviously would follow Section 455 to the letter. I would comply with the Code of Conduct for United States Judges and all applicable statutes, policies and procedures. I would also maintain a current conflicts list and diligently compare it to the corporate disclosure statements required in this venue. I would also determine if the involvement of any of the attorneys might create the appearance of impropriety, particularly members of my former law firm.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current**

calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

George Bush 2000: Madison County, Mississippi - Chairman.
Coordinated with the campaign.

Pickering for Congress 1996: Madison County, Mississippi-
Chairman. Organized grassroots campaign for Congressman
Pickering's first congressional race. Also served on
Advisory Committee and in other non-defined capacities in
subsequent campaigns.

Trent Lott for Mississippi 1988- Youth Coordinator /
driver. Drove the candidate during summer months,
organized all colleges, universities, junior colleges,
and some high schools in the Fall.

Mark Garriga for Attorney General 1997- Listed in filings
as Director, but mostly helped with fundraising and
grassroots efforts.

Due to my service as a member and Chairman of the Madison
County Republican Executive Committee, I have also been
generally involved in a number of local, state, and
federal elections for which I had no particular
responsibility or defined role.

AO-10 Rev. 1/2004		FINANCIAL DISCLOSURE REPORT Calendar Year 2005		Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)
1. Person Reporting (Last name, First name, Middle initial) Jordan, Daniel P.	2. Court or Organization U.S. District Court, MS	3. Date of Report 4/25/2006		
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge	5. Report Type (check appropriate type) <input checked="" type="radio"/> Nomination Date 4/24/2006 <input type="radio"/> Initial <input type="radio"/> Annual <input type="radio"/> Final	6. Reporting Period 1/1/2005 to 4/17/2006		
7. Chambers or Office Address 210 East Capitol St. 17th Floor AmSouth Plaza Jackson, MS 39201	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____			
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.				

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions)

☐ **NONE** - (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Equity Member	Butler, Snow, O'Mara, Stevens & Cannada, PLLC
2. Mississippi Bar Association, Litigation Section	Secretary/Treasurer
3.	

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions)

☐ **NONE** - (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1. 2006	Butler, Snow, O'Mara, Stevens & Cannada, PLLC- Capital Account contributions will be returned upon termination of membership in PLLC.
2.	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Jordan, Daniel P.	4/25/2006

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)**A. Filer's Non-Investment Income**☐ **NONE** - (No reportable non-investment income.)

	<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>GROSS INCOME</u> (yours, not spouse's)
1.	2004	Butler, Snow, O'Mara, Stevens & Cannada PLLC	262,268
2.	2005	Butler, Snow, O'Mara, Stevens & Cannada PLLC	257,408
3.	2006	Butler, Snow, O'Mara, Stevens & Cannada PLLC	106,673

B. Spouse's Non-Investment Income - (If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria))☒ **NONE** - (No reportable non-investment income.)

	<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.		

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ **NONE** - (No such reportable reimbursements.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>
1.		EXEMPT

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Jordan, Daniel P.

Date of Report

4/25/2006

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)☐ **NONE** - (No such reportable gifts.)

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. <u>EXEMPT</u>		

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)☒ **NONE** - (No reportable liabilities.)

<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1. <u></u>		

FINANCIAL DISCLOSURE REPORT**Page 1 of 2**Name of Person Reporting
Jordan, Daniel P.Date of Report
4/25/2006**VII. INVESTMENTS and TRUSTS** – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-K)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month - Day	(3) Value Code 2 (J-K)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1. AmSouth Bank account	C	None	J	T	Exempt				
2. Butler Snow Profit Sharing Plan		None	M	T	Exempt				
3. -Vanguard Prime Money Market Fund									
4. -Vanguard 500 Index Fund									
5. -Vanguard Growth and Income Fund									
6. -Vanguard Windsor II Fund									
7. -Vanguard International Growth Fund									
8. ABA Members Retirement 401(k)		None	M	T	Exempt				
9. -Stable Asset Return Fund									
10. -Large Cap Value Equity Fund									
11. -Large Cap Growth Equity Fund									
12. -Index Equity Fund									
13. -Mid Cap Value Equity Fund									
14. -Mid Cap Growth Equity Fund									
15. -International Equity Fund									
16. Citigroup Smith Barney									
17. -Bank Deposit Program	B	Dividend	M	T	Exempt				
18. -American Balanced Fund Class	A	Dividend	K	T	Exempt				

1. Indicate the type of asset (e.g., stock, bond, mutual fund, etc.) and the name of the asset.
 2. Indicate the type of income (e.g., dividend, interest, capital gain, etc.) and the amount of income.
 3. Indicate the type of transaction (e.g., purchase, sale, redemption, etc.) and the date of the transaction.
 4. Indicate the type of asset (e.g., stock, bond, mutual fund, etc.) and the name of the asset.
 5. Indicate the type of income (e.g., dividend, interest, capital gain, etc.) and the amount of income.
 6. Indicate the type of transaction (e.g., purchase, sale, redemption, etc.) and the date of the transaction.

FINANCIAL DISCLOSURE REPORT**Page 2 of 2**Name of Person Reporting
Jordan, Daniel P.Date of Report
4/25/2006**VII. INVESTMENTS and TRUSTS** — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div. rent, or int.)	(1) Value Code 2 (I-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month - Day	(3) Value Code 2 (I-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
19. -Franklin Income Fund Class C	B	Dividend	K	T	Exempt				
20. -Growth Fund of America Class C		None	K	T	Exempt				
21. Genentech 401(k)		None	M	T	Exempt				
22. -Fidelity Magellan									
23. -Fid Growth Company									
24. -Fid US Eq Index Pool									
25. -Fid Balanced									
26. -Fid Mgd Inc Port II									
27. Northwestern Mutual- Whole Life		None	J	T	Exempt				
28. MPACT (MS prepaid college tuition)		None	K	T	Exempt				

1. Name of the person reporting: _____

2. Date of report: _____

3. Name of the trust: _____

4. Name of the asset: _____

5. Value of the asset: _____

6. Date of acquisition: _____

7. Date of disposition: _____

8. Date of report: _____

9. Date of filing: _____

10. Date of payment: _____

11. Date of receipt: _____

12. Date of transfer: _____

13. Date of sale: _____

14. Date of purchase: _____

15. Date of gift: _____

16. Date of inheritance: _____

17. Date of loan: _____

18. Date of repayment: _____

19. Date of interest: _____

20. Date of dividend: _____

21. Date of capital gain: _____

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100. Date of capital gain/loss: _____

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Jordan, Daniel P.	Date of Report 4/25/2006
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)**FINANCIAL DISCLOSURE REPORT**

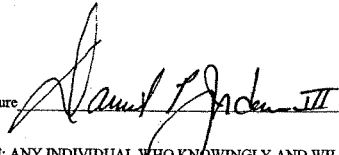
Name of Person Reporting Jordan, Daniel P.	Date of Report 4/25/2006
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IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature



Date

4.25.06

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		3	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		643	297	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Undistributed 2005 income from firm		6	167	Unpaid income tax			
Due from relatives and friends				Other unpaid income and interest			
Due from others				Real estate mortgages payable-add schedule		89	838
Doubtful				Chattel mortgages and other liens payable			
Real estate owned-add schedule		280	000	Other debts-itemize:			
Real estate mortgages receivable							
Autos and other personal property		90	000				
Cash value-life insurance		2	230				
Other assets itemize:							
Prepaid college tuition - IMPACT		30	831				
				Total liabilities		89	838
				Net Worth		965	687
Total Assets	1	055	525	Total liabilities and net worth	1	055	525
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		No	
On leases or contracts				Are you defendant in any suits or legal actions?		No	
Legal Claims				Have you ever taken bankruptcy?		No	
Provision for Federal Income Tax							
Other special debt							

SchedulesListed Securities

Butler Snow Profit Sharing Plan:	
Vanguard Prime Money Market Fund	9,386
Vanguard 500 Index Fund	70,775
Vanguard Growth and Income Fund	960
Vanguard Windsor II Fund	24,288
Vanguard International Growth Fund	<u>1,034</u>
	106,443
Genentech 401(k)	
Fidelity Magellan	43,674
Fid Growth Company	57,418
Fid US Eq Index Pool	73,122
Fid Balanced	10,421
Fid Mgd Inc Port II	<u>7,958</u>
	192,593
Earnest Partners Fixed Income Trust	240
ABA Members Retirement Program 401(k)	
Stable Asset Return Fund	19,548
Large Cap Value Equity Fund	19,090
Large Cap Growth Equity Fund	9,240
Index Equity Fund	18,839
Mid Cap Value Equity Fund	9,064
Mid Cap Growth Equity Fund	20,215
International Equity Fund	<u>20,853</u>
	116,849
Citigroup Smith Barney	
Bank Deposit Program	147,891
American Balanced Fund Class C	21,406
Franklin Income Fund Class C	27,054
Growth Fund of America Class C	<u>30,821</u>
	227,172
Total Listed Securities:	643,297
<u>Real Estate Owned</u>	
Personal residence	280,000
<u>Real Estate Mortgages Payable</u>	
Personal residence	89,838

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

In 2005, I received the Hinds County Bar Association Pro Bono Award given yearly to one member of the state's largest bar association. Prior to that, I provided pro bono legal services at varying levels throughout my legal career.

Early in my career, I was active in the Legal Lines program through Jackson Young Lawyers. The program provided a toll-free number people could call to obtain advice on seeking legal aid. I responded to calls over the years, and it would be impossible to say how much time I devoted to this project.

During this same period, I provided pro bono legal services to Whispering Pines Hospice. This included two litigated matters, one of which resulted in summary judgment in federal court. I also routinely answered legal questions for the hospice and assisted with its employee handbook.

I also recall defending a tree cutter on a pro bono basis when his insurance company denied coverage and he could not afford a defense.

Later in my career, I began serving at the Stewpot Legal Clinic. Stewpot is a multi-denominational homeless shelter that provides daily meals. Each Tuesday, volunteer lawyers answer legal questions. I have been doing this for several years. In the 2004-2005 timeframe, I saw that the Mississippi Volunteer Lawyer's Project was having a difficult time staffing Stewpot, so I volunteered to coordinate through the end of 2005. I helped locate new volunteers, conducted training sessions for those volunteers, wrote a short article for the Mississippi Bar Association's newsletter, and worked at the clinic. My guess is that I spent in the neighborhood of 20 - 30 hours through August 2005. Since the summer of 2005, I have continued working at Stewpot and have volunteered to again coordinate the program in 2006.

I also worked as a volunteer lawyer at one of the Hurricane Katrina relief centers in Biloxi, Mississippi for three full days in the weeks following the hurricane.

Because the Mississippi Supreme Court now requires pro bono service, the firm began tracking hours in August 2005. Since that time, I have provided over 45 hours worth of pro bono service to the disadvantaged.

Finally, although not for the "disadvantaged," I am coordinating our firm's participation in the Capitol Relievers program with the City of Jackson. The City Attorney's office had a 200 case backload, and the basics were not being covered. In the Fall of 2005, our firm and two others agreed to provide pro bono services. Since then, I have contributed more than 33 hours of legal services working with an associate on a \$12 million federal false arrest case that resulted in a summary judgment that is now on appeal. I have also had a number of meetings and conversations with the City regarding the structure of the program and other cases assigned to my colleagues.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I have never held membership in any such organization although I was in a fraternity in college.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There is no formal selection commission in this jurisdiction. When the current vacancies became apparent, I expressed my interest directly to Senator Trent Lott and

later met with Senator Thad Cochran as well as members of both senators' staffs. My understanding is that both senators submitted my name to the White House. I was thereafter interviewed at the White House by attorneys from the White House Counsel's office and the Department of Justice. Since that time, I have undergone the standard FBI background investigation and completed all requested nomination paperwork.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an

**administrator with continuing oversight
responsibilities.**

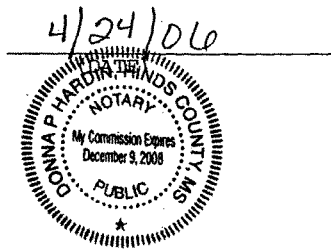
In my view, it is not the role of the federal judiciary to determine public policy or what the law should be. Those responsibilities appropriately reside with officials who must face the electorate and are therefore in a far better position to protect the democratic will of the people. A judge's role is more restricted. A judge must put his or her personal thoughts and beliefs aside, and not try to determine whether a law passed by Congress and signed by the President is a good idea. Rather, a judge should apply the law to the facts of the case and follow the law to the result it intended.

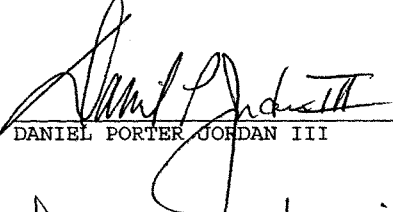
Stare decisis creates another limitation on the free will of judges, especially district court judges. District court judges must follow precedent. To do otherwise would destabilize our legal system and encourage conflict and litigation over otherwise settled positions.

Having said all of that, it is the sworn duty of the judiciary to "defend, uphold, and protect the Constitution." Accordingly, I do not view it as activism or encroachment to strike down unconstitutional laws or acts that come before the court. That is, however, a powerful check and one that should never be taken lightly. There is (and should be) a presumption of constitutionality that must be recognized. If faced with such a decision, I will do my best to ensure that due deference is given to the separation of powers and that I have followed the Constitution rather than my personal views of the law in question.


AFFIDAVIT

I, Daniel Porter Jordan III, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.





DANIEL PORTER JORDAN III



(NOTARY)

Senator COBURN. Judge Gelpi?

**STATEMENT OF GUSTAVO A. GELPI, NOMINEE TO BE DISTRICT
JUDGE FOR THE DISTRICT OF PUERTO RICO**

Judge GELPI. Thank you, Senator. I join my colleagues. I would also like to thank the President for nominating me, as well as you and the members of this Committee for having me here today. I would also like to thank Congressman Fortuño for being here with me today.

Today with me is my father, who gave me his same name. He is sitting right behind me.

Senator COBURN. Welcome.

Judge GELPI. I also have some friends from Puerto Rico and from the Mainland who are here today and former colleagues of mine from the Sentencing Commission. They are here as well. My wife and children, 5 and 2 years, respectively, are not here today. Like Mr. Jordan, I felt the hearing could go smoother. They are not here, but they are here in spirit. They thank you also for having me here today.

[The biographical information of Judge Gelpi follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Gustavo Antonio Gelpi

2. **Address: List current place of residence and office address(es).**

Residence: Guaynabo, Puerto Rico 00966

Office: Federal Building, Suite 483
150 Chardon Avenue
San Juan, Puerto Rico 00918

3. **Date and place of birth.**

December 11, 1965
San Juan, Puerto Rico

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Married to María Soledad Ramírez, Attorney
She is self- employed, with office at
Midtown Plaza, Suite 414, 420 Muñoz Rivera Avenue
San Juan, Puerto Rico 00918

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

Suffolk University Law School, Boston, Massachusetts
Dates of attendance: August 1988 – May 1991
Degree received: J.D. in May 1991

Arizona State University Law School, Tempe, Arizona
Dates of attendance: August 1987 – December 1987
Degree received: none

Brandeis University, Waltham, Massachusetts
Dates of attendance: August 1983 – May 1987
Degree received: B.A., Major in History in May 1987

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

June 2001 – Present; United States District Court for the District of Puerto Rico;
United States Magistrate Judge

January – June 2001; McConnell Valdés; Special Litigation Counsel

October 1999 – December 2000; Government of Puerto Rico;
Solicitor General of the Commonwealth of Puerto Rico

January 1997 – September 1999 – Puerto Rico Department of Justice as
Assistant to the Attorney General and subsequently as Deputy
Attorney General at the Office of Legal Counsel

November 1993 – January 1997; U.S. Courts as an Assistant Federal
Public Defender

July – December 1996; United States Sentencing Commission as a Special
Counsel (detail from the Federal Public Defender Office)

October 1991 – October 1993; United States District Court for the District of
Puerto Rico; Law Clerk to the Honorable Juan M. Pérez-Giménez, United
States District Judge

June 1990 – August 1990; Fiddler, Gonzalez & Rodriguez (San Juan, Puerto
Rico); Summer Associate

June 1989 – August 1989; United States District Court for the District of Puerto
Rico; Student Law Clerk to the Honorable Juan M. Perez-Gimenez, Chief
United States District Judge

January 1988 – June 1988; Rosie's Bakery (Cambridge, Massachusetts);
salesperson

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Fellow of the Foundation of the Federal Bar Association since 2003

Honorary Doctor of Laws, Suffolk University Law School; to be received on May 20, 2006

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Federal Bar Association (member since 1992)
 Puerto Rico Bar Association (member since 1992)
 Virgin Islands Bar Association (member since 1994)

Offices held in the Federal Bar Association

2005 – Secretary to the Vice Presidents for the Circuits (National position)
 2002 – Present - Vice President for the First Circuit (National position)
 2001 – Chairman, Professional Ethics Committee (National position)
 2001 – Member, National Council (National position)
 2001 – Immediate Past President, Puerto Rico Chapter
 2000 – President, Puerto Rico Chapter
 1999 – Vice President, Puerto Rico Chapter
 1997, 1998 – Treasurer, Puerto Rico Chapter
 1994, 1995, 1996 – Director, Puerto Rico Chapter

Membership in Judicial Committees

2002 – present: Criminal Justice Act (CJA) Committee,
 U.S. District Court for the District of Puerto Rico

1994 – 2000, 2001 – present: Federal Bar Examination Committee,
 U.S. District Court for the District of Puerto Rico

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Caribe Hilton Swimming & Tennis Club (member since 1992)

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Massachusetts (1991)
 Puerto Rico (1992)
 New York (1992)
 Colorado (1993)
 United States Virgin Islands (1994)
 Supreme Court of the United States (1996)
 United States Courts of Appeals for the First Circuit (1992), Second Circuit (2000), Third Circuit (1996), Eleventh Circuit (1993), D.C. Circuit (1998)
 United States District Courts for the Districts of Puerto Rico (1992), Massachusetts (1993), New York (Southern)(1993), Virgin Islands (1994);
 United States Court of Military Appeals (1995)
 United States Court of Federal Claims (1993)

Due to my current judicial position, I hold inactive status in Colorado and the U.S. Virgin Islands, and retired status in New York. I hold active status in all other jurisdictions and am current in my bar dues.

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Judicial Profile: The Honorable Juan M. Pérez-Giménez, Vol. 52 No. 3 The Federal Lawyer (March/April 2005)

A View From the Bench: Words of Advice to Our Younger [Federal Bar Association] Members, From the Bar, Vol. I, Issue 34 (Winter 2002)

Consideraciones Legales y Eticas al Representar a Inmigrantes en Casos Criminales, 39 Revista de Derecho Puertorriqueño 29 (2000) (translation to be provided)

Drug Courts, From the Bar, Vol I, Issue 18 (Winter 1998)

The Maritime Law of Puerto Rico, 28 Journal of Maritime Law and Commerce 647 (1997)

Judicial Profile: The Honorable Juan R. Torruella, Vol. 44 No. 7 The Federal Lawyer (August 1997)(coauthor)

Sentencing Tips for Beginning Federal Practitioners, Vol. 11 No. 4 American Bar Association Criminal Justice Magazine (Winter 1997)(coauthor)

Consecuencias Colaterales de una Convicción Criminal: Consideraciones Éticas y Profesionales al Representar a Inmigrantes Quienes Residen Legalmente en Puerto Rico, 35 Revista de Derecho Puertorriqueño 133 (1996)(translation to be provided)

La Sentencia Sumaria en Casos de Responsabilidad Civil por Actos Criminales de Terceros en Establecimientos Públicos, 56 Revista del Colegio de Abogados 163 (1995)(translation to be provided)

Maritime Law in Puerto Rico: An Anomaly in a Sea of Federal Uniformity, 26 Revista Jurídica de la Universidad Interamericana 251 (1992)

I have not made any speeches on issues involving constitutional law or legal policy

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Excellent. My last physical examination took place on April 4, 2006.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

United States Magistrate Judge for the District of Puerto Rico. Appointed by designation of U.S. District Court Judges for the District of Puerto Rico on March 14, 2001. I took office on June 29, 2001, and have occupied the position until the present.

Jurisdiction: The United States District Court for the District of Puerto Rico has original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States and civil actions as set forth in 28 U.S.C. § 1330 through 1369; and original jurisdiction in criminal matters exclusive of the courts of the state, of all offenses against the laws of the United States and such criminal matters set forth in 18 U.S.C. §§ 3232 through 3244. A Magistrate-Judge's jurisdiction is conferred statutorily and consists of all powers and duties conferred or imposed by law or by Rule of Criminal Procedure for the U.S. District Courts; the power to administer oaths and affirmations, issue orders for release or detention of persons pending trial, take acknowledgments, affidavits, and depositions; the power to conduct trials as statutorily provided; the power to enter

a sentence for a petty offense in class A misdemeanor cases where the parties consent, and any other duties that are not contrary to any provision of the law. See 28 U.S.C. § 636.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) Ten most significant opinions written

- (i) Ayuso-Figueroa v. Rivera-González, 229 F.R.D. 41 (D.P.R. 2005)
- (ii) United States v. A.C.P., 2005 WL 1367396 (D.P.R.), aff'd, 379 F. Supp. 2d 225 (D.P.R. 2005)
- (iii) Ramos-Piñero v. Commonwealth of Puerto Rico, 359 F. Supp. 2d 56 (D.P.R. 2005) and 2005 WL 713327
- (iv) Re-Ace, Inc. v. Wheeled Coach Industries, Inc., 317 F. Supp. 2d 84 (D.P.R. 2004) and 270 F. Supp. 2d 223 (D.P.R. 2003), aff'd, 363 F.3d 51 (1st Cir. 2004)
- (v) Broadwell v. Municipality of San Juan, 312 F. Supp. 2d 132 (D.P.R. 2004)
- (vi) Díaz-Rivera v. Rivera-Rodríguez, 247 F. Supp. 2d 106 (D.P.R. 2003), aff'd, 377 F.3d 119 (1st Cir. 2004)
- (vii) Puerto Rico Campers Association v. Puerto Rico Aqueduct and Sewer Authority, 219 F. Supp. 2d 201 (D.P.R. 2002)
- (viii) United States v. Colón-Osorio, 188 F. Supp. 2d 153 (D.P.R. 2002)
- (ix) United States v. Santiago, 194 F. Supp. 2d 82 (D.P.R. 2002)
- (x) United States v. Acevedo-Delgado, 167 F. Supp. 2d 477 (D.P.R. 2001)

(2) Summary of appellate opinions in which my opinion was reversed

- (i) New Comm Wireless Services, Inc. v. Sprintcom, Inc., 287 F.3d 1 (1st Cir. 2002).

This case involved a petition for preliminary injunctive relief for tortious interference with contractual relations between a local wireless telephone services provider and its customers. My order granting injunctive relief was vacated on appeal.

(3) Citations for Significant Opinions on Federal Constitutional Issues

- (i) Broadwell v. Municipality of San Juan, 312 F. Supp. 2d 132 (D.P.R. 2004)
- (ii) United States v. Acevedo-Delgado, 167 F. Supp. 2d 477 (D.P.R. 2001)

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1999 – 2000 Solicitor General of the Commonwealth of Puerto Rico.

This position involved the appointment by the Governor of Puerto Rico, and required confirmation by the Senate of the Commonwealth of Puerto Rico.

17. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Law Clerk to the Honorable Juan M. Pérez-Giménez, United States District Judge, U.S. District Court for the District of Puerto Rico. October 1991 – October 1993

2. whether you practiced alone, and if so, the addresses and dates;

I never have practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

2001 – Present: U.S. Magistrate-Judge
United States District Court for the District of Puerto Rico
150 Chardón Avenue, Suite 483
San Juan, Puerto Rico, 00918

2001 (January – June): Special Litigation Counsel, McConnell Valdés, 270 Muñoz Rivera Avenue, San Juan, Puerto Rico 00918

October 1999 – December 2000: Solicitor General of the Commonwealth of Puerto Rico
Puerto Rico Department of Justice,
Olimpo St. # 2, 7th Floor, San Juan, Puerto Rico 00907

November 1997 – September 1999: Deputy Attorney General for the Office of Legal Counsel, Puerto Rico Department of Justice, Olimpo St. #2, San Juan, Puerto Rico 00907

January 1997 – October, 1997: Assistant to the Attorney General
Puerto Rico Department of Justice,
Olimpo St. # 2, San Juan, Puerto Rico 00907

November 1993 – January 1997: Assistant Federal Public Defender
Office of the Federal Public Defender
259 F.R.D. Roosevelt Ave., San Juan, Puerto Rico 00918

July 1996 – December 1996: Special Counsel to the U.S. Sentencing Commission Federal Judiciary Building, Washington, D.C. 20008
(I was on a six-month detail from the Federal Public Defender's Office)

October 1991 – October 1993: Law Clerk, Hon. Juan M. Pérez-Giménez, United States District Judge
U.S. District Court for the District of Puerto Rico
150 Chardon Ave, Room 125
San Juan, Puerto Rico 00918

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

January to June 2001: As Special Litigation Counsel at McConnell Valdés I worked almost exclusively in commercial litigation cases before the U.S. District Court for the District of Puerto Rico. I also worked in one case before the Puerto Rico Court of First Instance, Superior Court Part, and in one matter before an administrative agency.

October 1999 to December 2000: As Solicitor General of the Commonwealth of Puerto Rico I headed an office composed of a Deputy Solicitor General, thirty five (35) Assistant Solicitor Generals and support staff. My office represented the Commonwealth of Puerto Rico, its Governor and executive branch officers in all appellate civil and criminal cases before the Puerto Rico Supreme Court and intermediate Appeals Court, as well as before the United States Court of Appeals for the First Circuit. On numerous occasions, I personally appeared and/or argued before said Courts, as well as before the United States Court for the District of Puerto Rico, and in one specific instance before the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit. These cases involved matters of high public importance, mostly constitutional questions. I also presented amicus briefs before the U.S. Supreme Court and U.S. Court of Appeals for the D.C. Circuit, as well as advised the Attorney General whether to join amicus briefs of other Attorney Generals. My office was also assigned by the Puerto Rico Supreme Court the investigation and prosecution of complaints involving ethical misconduct of attorneys. I was also a member of the Department of Justice's committee for evaluating candidates for positions of district attorneys and deputy prosecutors.

January 1997 to September 1999: As Assistant to the Attorney General (January-November, 1997), and later as Deputy Attorney General for the Office of Legal Counsel at the Puerto Rico Department of Justice (November, 1997 - September, 1999), I was responsible for advising and representing the Attorney General of Puerto Rico in both civil and criminal matters. These matters involved the preparation of legal opinions for the Governor, Attorney General and other executive branch officials; appearing before the Commonwealth Senate and House of Representatives to comment on proposed legislation; drafting bills for the Governor and Attorney General to submit to the Legislature, and advising the

Governor whether to sign bills into law or veto the same; drafting and reviewing all contracts and agency agreements involving the Department of Justice; coordinating special legislative and administrative projects involving multiple agencies or branches of government; and litigating before federal district and appellate courts cases involving important constitutional questions and other matters of public policy. I also served at times as acting Attorney General, acting Solicitor General and Deputy Solicitor General.

July – December 1996: As Special Counsel to the U.S. Sentencing Commission I was involved in multiple projects involving the revision and application of the U.S. Sentencing Guidelines.

November 1993 – January 1997: As an Assistant Federal Public Defender I represented indigent defendants who were criminally charged before the U.S. District Court for the District of Puerto Rico. I handled all of my assigned cases since the defendant's initial appearance throughout trial or guilty plea and sentence, and on appeal. I also worked on various post-conviction relief matters.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

January – June 2001: My clients at McConnell Valdes were all corporate clients. The bulk of my legal practice was devoted to federal court litigation.

October 1999 – December 2001: My clients as Solicitor General of Puerto Rico were the Commonwealth of Puerto Rico, its Governor, Attorney General and executive branch officers. About 70% of my practice was devoted to appellate work, 15% to investigating and prosecuting cases of attorney ethical misconduct, and 15% to litigating constitutional matters before the U.S. District Court and other courts.

January 1997 – September 1999: My clients at the Department of Justice were the Commonwealth of Puerto Rico, its Governor, Attorney General and executive branch officers. About 40% of my practice was devoted to federal litigation involving constitutional and important public policy matters before the U.S. District Court and other federal courts.

November 1993 – January 1997: My clients at the Federal Public Defender office were exclusively indigent criminal defendants charged in federal court. 100% of my practice was devoted to criminal litigation before the U.S. District Court and U.S. Court of Appeals.

- c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

While working as Special Litigation Counsel at McConnell Valdes I appeared in court occasionally. As Solicitor General, and as Assistant to the Attorney General and Deputy Attorney General I appeared in court frequently. As an Assistant Federal Public Defender I appeared in Court frequently, almost on a daily basis.

2. **What percentage of these appearances was in:**
 (a) **federal courts:** 80%
 (b) **state courts of record:** 20%
 (c) **other courts:**

[Note - need consolidated number here, as above example]

3. **What percentage of your litigation was:**
 (a) **civil:** 50%
 (b) **criminal:** 50%

[Note - need consolidated number here, as above example]

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

I tried to verdict seven cases as sole counsel and three cases as co-counsel

5. **What percentage of these trials was:**
 (a) **jury:** 70%
 (b) **non-jury:** 30%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Ramos-Vázquez, Criminal No. 94-53(CCC), before the United States District Court for the District of Puerto Rico (Hon. Carmen C. Cerezo, U.S. District Judge, presiding). The defendant in this case challenged the lawfulness of a police search leading to the seizure of narcotics and weapons in his apartment. Following an evidentiary hearing, defendant was able to demonstrate that the state police officer who subscribed the affidavit in support of the search warrant provided materially false information therein. As a result, the Government voluntarily dismissed the case. I represented defendant Ramos-Vázquez and filed the motion to dismiss, as well represented him during the evidentiary hearing.

The Government was represented by Assistant U.S. Attorney Charles Fitzwilliams. His present address and telephone are PO Box 9021157, San Juan, P. R. 00902-1157; (787) 381-7108. A codefendant was represented by attorney Maria H. Sandoval. Her present address and telephone are PO Box 9878, San Juan, P.R. 00918; (787) 282-0277.

2. United States v. Vázquez-Rivera, 83 F.3d 542 (1st Cir. 1996), before the United States District Court for the District of Puerto Rico (Hon. Juan M. Pérez-Giménez, presiding) and on appeal before the United States Court of Appeals for the First Circuit (Hon. Juan R. Torruella, Chief Circuit Judge, Frank Coffin, Senior Circuit Judge, and Conrad Cyr, Circuit Judge, presiding). After a jury trial defendant was convicted of carjacking. At sentencing, the Court imposed a ten (10) year statutory enhancement to his fifteen (15) year sentence on the ground that the victim sustained serious bodily injury. On appeal, the sentence was vacated as there existed no evidentiary basis for the enhancement. The case was remanded for resentencing. I represented defendant since his arrest, throughout trial and sentencing, as well as on appeal, arguing the case. I did not represent defendant at his resentence.

The Government was represented by Assistant United States Attorney Sylvia Carreño. Her present address and telephone are U.S. Attorney's Office, Torre Chardón, 350 Chardón Ave., Suite 1201, San Juan, P.R. 00913; (787) 282-1933.

3. Partido Accion Civil v. Estado Libre Asociado (Commonwealth of Puerto Rico), 150 D.P.R. 359, 2000 WL 223543 (P.R.) and on reconsideration, 150 D.P.R. 805, 2000 WL 462276 (P.R.) (translations will be provided upon request), before the

Supreme Court of Puerto Rico (Hon. José Andreu-García, Chief Justice, Hon. Antonio Negrón-García, Hon. Francisco RebolloLópez, Hon. Myriam Navería de Rodón, Hon. Federico Hernández-Denton, Hon. Jaime Fuster-Berlingeri and Hon. Baltasar Corrada Del Río, Associate Justices, presiding). In this case plaintiff, a political organization, sought to register as a party for the 2000 election. Unable to do so, it challenged on constitutional grounds a provision of Puerto Rico's electoral law which required that all signatures accompanying the party's registration petition be sworn before a notary public. The Supreme Court upheld the validity of the law. I represented the Commonwealth of Puerto Rico on appeal and argued the case before the Puerto Rico Supreme Court.

Plaintiff was represented by attorney Nelson Rosario. His present address and telephone are: PO Box 23069, San Juan, P. R. 00931-3069; (787) 764-0429. Codefendant State Elections Commission was represented by attorneys Ramón Walker and Pedro Delgado. Their addresses and telephone numbers, respectively are: Attorney Walker, PO Box 9023550, San Juan, P.R. 00902-350; (787) 729-9923, and Attorney Delgado, O'Neill & Borges, 8th Floor, American International Plaza, 250 Muñoz Rivera Ave., San Juan, Puerto Rico 00918-1808; (787)764-8181.

4. Cruz v. Melecio, 204 F.3d 14 (1st Cir. 2000), before the United States District Court for the District of Puerto Rico (Hon. Juan M. Pérez-Giménez, presiding) and on appeal before the United States Court of Appeals for the First Circuit (Hon. Bruce M. Selya, Hon. Sandra Lynch and Hon. Michael Boudin, Circuit Judges presiding). This case involved a parallel constitutional attack in federal court to the notary requirement set forth in Puerto Rico's electoral law for a new political party to register. The Court of Appeals held that considerations of comity and federalism warranted that the federal court abstain from entertaining the case, as an identical case (that described in item 3, above) was pending before the Puerto Rico Supreme Court, wherein both federal and state claims had been properly raised. I represented the Commonwealth of Puerto Rico as intervenor and argued the case on appeal.

The plaintiff was represented by attorney Roberto A. Fernández. His present address and telephone are: Westernbank World Plaza, Suite 1500, 268 Muñoz Rivera Ave., San Juan, P.R. 00918; (787) 758-7819. Co-appellee State Elections Commission was represented by Attorney Pedro Delgado. His present address and telephone are: O'Neill & Borges, 8th Floor, American International Plaza, 250 Muñoz Rivera Ave., San Juan, Puerto Rico 00918-1808; (787)764-8181.

5. Jusino Mercado v. Commonwealth of Puerto Rico, 214 F.3d 34 (1st Cir. 2000), before the United States District Court for the District of Puerto Rico (Hon. Daniel R. Domínguez and Hon. Hector M. Laffitte, United States District Judges presiding in cases consolidated for appeal) and on appeal before the United States Court of Appeals for the First Circuit (Hon. Bruce M. Selya, Hon. Frank Coffin, and Hon. Kermit Lipetz, Circuit Judges). In this case public employees of the

Commonwealth of Puerto Rico sought overtime pay and liquidated damages arising out of alleged violations of the Fair Labor Standards Act. The Court held that Puerto Rico, like the 50 States, is immune from such federal damages action. I represented the Commonwealth on appeal and argued the case.

Plaintiffs were represented by attorney Michael T. Leibig (deceased).

6. Igartua de la Rosa v. United States, 229 F.3d 80 (1st Cir. 2000) before the United States District Court for the District of Puerto Rico (Hon. Jaime Pieras, Jr., presiding) and on appeal before the United States Court of Appeals for the First Circuit (Hon. Juan R. Torruella, Chief Judge, Hon. Sandra Lynch and Hon. Kermit Lipez, Circuit Judges). This case involved a declaratory judgment of the District Court holding that plaintiffs, United States citizens residing in the Commonwealth of Puerto Rico, were entitled to vote for President and Vice President in national elections. On appeal, the judgment of the district court was reversed, on the ground that only the States are entitled by the Constitution to have electors. I represented in this case plaintiff-intervenors Commonwealth of Puerto Rico and its Governor, both at the district and appellate level, and argued the case on appeal.

Assistant United States Attorney Miguel Fernández represented the United States. His address and telephone number are Torre Chardón, 350 Chardón Ave., Ste 1201, San Juan, P.R. 00918; (787) 766-5656. Attorney and pro-se plaintiff Gregorio Igartua represented himself. His address and telephone are PO Box 3911, Aguadilla, P.R. 00605; (787) 891-9040.

7. Romeu v. Cohen, 265 F.3d 118 (2nd Cir. 2001) before the United States District Court for the Southern District of New York (Hon. Shira A. Scheidlin, presiding) and on appeal before the United States Court of Appeals for the Second Circuit (Hon. John M. Walker, Chief Judge, Hon. James L. Oakes and Hon. Pierre Leval, Circuit Judges, presiding). This case involved a request for declaratory judgment filed by a United States citizen who was a former resident of New York and moved to Puerto Rico. Plaintiff, unable to vote for President and Vice President in Puerto Rico, sought to vote for these federal elected officials pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) by voting in his last place of residence in the States. The Court held that the UOCAVA's exclusion of United States territories for purposes of absentee voting was not unconstitutional. I represented co-plaintiffs-intervenors the Commonwealth of Puerto Rico and its Governor, both at the district and appeals court levels, and argued the case on appeal.

Attorney and pro se plaintiff Xavier E. Romeu represented himself. I have been unable to obtain information as to his present place of work. The United States

and federal defendants were represented by Assistant U.S. Attorney Daniel S. Alter. He is presently employed at the U.S. Attorney's office for the Southern District of New York, Civil Division, 86 Chambers St., New York, New York 1007; (212) 637-2800. Defendant Westchester County was represented by Attorney Deborah A. Porder. I have been unable to obtain information as to her present place of work.

8. Olguin Arroyo v. State Elections Board, 30 F. Supp. 2d 183 (D.P.R. 1998) before the United States District Court for the District of Puerto Rico (Hon. Jaime Pieras, Jr. presiding). This case involved a constitutional challenge to the deadline to register to vote in Puerto Rico's 1998 status plebiscite. The action was filed in state court but was removed by the Commonwealth to federal court. The district court held that removal was proper. Following a bench trial, the Court further held that the challenged deadline was not unconstitutional as applied to plaintiffs. I represented the Commonwealth of Puerto Rico throughout the case.

The State Elections Board was represented by Attorney Pedro Delgado. His address and telephone number are: O'Neill & Borges, 8th Floor, American International Plaza, 250 Muñoz Rivera Ave., San Juan, Puerto Rico 00918-1808; (787) 764-8181. Plaintiffs were represented by attorney Pedro Varela. His address and telephone number are: Esquire Bldg., Suite 402, 2 Vela St., San Juan, P.R. 00918-3622; (787) 751-3931.

9. Popular Democratic Party v. Commonwealth of Puerto Rico, 24 F. Supp. 2d 184 (D.P.R. 1998) before the United States District Court for the District of Puerto Rico (Hon. Juan M. Pérez-Giménez, presiding). This case involved a constitutional challenge to the definition of "Commonwealth" status provided to voters in Puerto Rico's 1998 status plebiscite. The action was filed in state court but was removed by the Commonwealth to federal court. The district court held that removal was proper as the juridical status of Puerto Rico constituted an important federal question. A petition for mandamus seeking remand to state court was filed by plaintiffs before the First Circuit, and was denied in an unpublished order. Following said ruling on appeal, the plaintiffs voluntarily dismissed the case. In this case I represented defendant along with the Attorney General and Solicitor General of Puerto Rico. My participation consisted of assisting in the preparation of briefs and other pleadings filed before the district and appeals courts.

Plaintiffs were represented by attorney Lino Saldaña. His address and telephone are Banco Popular Center, Suite 1420, 208 Ponce de León Ave., San Juan, P.R. 00918-1050; (787) 758-7565. My co-counsel were attorneys José Fuentes-Agostini, Attorney General and Carlos Lugo-Fiol, Solicitor General. Their respective addresses and telephone numbers are: Attorney Fuentes-Agostini, 131 K St. NW St. 1100, Washington, DC 20005; (202) 414-9236; Attorney Lugo-Fiol,

Banco Popular Center, Suite 1420, 208 Ponce de León Ave., San Juan, P.R. 00918; (787) 753-7565.

10. El Pueblo de (People of) Puerto Rico v. Pedro Vicens-Salas, No. 97-2447(CCC) before the United States District Court for the District of Puerto Rico (Hon. Carmen C. Cerezo, United States District Judge, presiding). The defendant, a federal agent, was charged in Commonwealth court of felony assault. Defendant removed the action to federal court and then moved to dismiss the action because a federal grand jury had not indicted him. The Court held that because the action was a removed one which commenced in state court, the procedure to commence the action was that provided by Puerto Rico law, which did not provide for the filing of charges by grand jury indictment, but rather called for the filing of an information followed by a probable cause hearing. The Court further held that the defendant's petition for grand jury indictment could not be granted in this instance, because the Commonwealth government did not have access to a federal grand jury. I represented the Commonwealth of Puerto Rico in this matter and was the attorney who prepared the memorandum in opposition to defendant's motion to dismiss.

Defendant was represented by Assistant United States Attorney Fidel Sevillano. His address and telephone are : 350 Chardón Ave., Suite 1201, San Juan, P.R. 00918; (787) 282-1844.

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

As Solicitor General and as Deputy Attorney General at the Puerto Rico Department of Justice I evaluated proposed *amicus curiae* briefs prepared by the National Association of Attorneys General for filing before the United States Supreme Court. I would then make a recommendation to the Attorney General of Puerto Rico as to whether to join in the brief or not. I also prepared and signed two *amicus* briefs in cases pending before the United States Court of Appeals for the D.C. Circuit and United States Supreme Court. In Lozada-Colón v. Department of State, 170 F.3d 191 (D.C. Cir. 1999) I submitted the position of the Commonwealth of Puerto Rico to the effect that federal law did not recognize a "puertorican" citizenship apart from United States citizenship and nationality. In Efron v. United States, cert. denied, 528 U.S. 987 (1999), on behalf of the Commonwealth of Puerto Rico I urged the United States Supreme Court to grant certiorari to decide whether the statutory United States citizenship of persons born in Puerto Rico is equivalent to United States citizenship acquired by birth in one of the States or via naturalization.

During my tenure as Solicitor General I settled the case of Schneider v. Colegio de Abogados de (Bar Association of) Puerto Rico, 917 F.2d 620 (1st Cir. 1990). This case commenced in 1983 and involved a federal constitutional challenge to Puerto Rico's compulsory bar association requirement. While the legal issues were all resolved on appeal, the issue of payment of mandatory attorney's fees (in excess on half a million dollars) to the prevailing plaintiff was pending for several years. I also settled the case of Alvarado v. Alvarado, 93-2083(CCC), a case involving the layoffs of numerous government employees, following a change in government administration. Both settlements involved a considerable time consuming effort by all counsel involved, which in the end benefitted all the parties and greatly limited the Commonwealth's possible exposure should the matter have continued.

During my tenure as Assistant to the Puerto Rico Attorney General and Deputy Attorney General at the Office of Legal Counsel I was involved in the implementation and expansion of the Drug Court Program throughout Puerto Rico's judicial regions. Said program consisted of a joint effort between law enforcement executive branch agencies, headed by the Justice Department, and the judicial branch. Its purpose was to allow first time, non-violent offenders with substance abuse problems to enter into an intensive, court-supervised, rehabilitative program, which, if successfully completed, would result in the dismissal of their criminal case. Contrary to traditional rehabilitative programs, the drug court program distinguishes itself because of the frequent in-court follow-up meetings the defendant has with his attorney, the prosecutor, treatment provider and judge, all geared towards preparing the offender to become a productive, law-abiding citizen. Based on my recommendation, the Puerto Rico Attorney General lobbied for, and received, over ten million dollars from the local Legislature for the program, on a recurring annual basis. I also created a special office within the Department of Justice, headed by a Drug Court coordinator, whose function was to supervise the several drug court components, as well as disburse the program's funds. Using state and federal drug court grant funds I also created several special prosecutor positions at the Department of Justice, and coordinated visits and training to other state drug court programs throughout the United States.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

I have held judicial office as a U.S. Magistrate Judge for four and a half years. Accordingly, I do not have any deferred income or benefits, nor any type of arrangements for compensation. I do not participate in any private or state retirement plans.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

I will resolve any potential conflict of interest in the same manner I have done for the past five years as a United States Magistrate Judge. I will continue to guide myself by the Code of Conduct for United States Judges, as well by all applicable statutes, jurisprudence and guidelines. At present, upon being assigned any case, civil or criminal, I immediately verify who the parties and their counsel are to determine whether recusal is warranted. If a corporate party is involved, I further verify that I do not hold any stock interest in the same.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

Please see attached Financial Disclosure Report

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached Net Worth Statement

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

I have never held a position nor played any role in a political campaign.

AO 10
Rev. 1/2006FINANCIAL DISCLOSURE REPORT
NOMINATION FILINGReport Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial) Golpi, Gustavo A	2. Court or Organization U.S. District Court for P.R.	3. Date of Report 04/25/2006
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) US District Judge - <i>Nominee</i>	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 04/24/2006 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2005 to 04/15/2006
7. Chambers or Office Address U.S. District Court Federal Office Bldg., Suite 483 San Juan, PR 00918-0483	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
<p>IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.</p>		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of instructions.)

☐ NONE (No reportable positions.)

POSITION

NAME OF ORGANIZATION/ENTITY

1. First Circuit Vice President	Federal Bar Association
2. Secretary to the Circuit Vice Presidents	Federal Bar Association
3.	
4.	
5.	

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of instructions.)

☒ NONE (No reportable agreements.)

DATE

PARTIES AND TERMS

1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT
 Page 2 of 9

 Name of Person Reporting
 Gelpi, Gustavo A

 Date of Report
 04/25/2006

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*
A. Filer's Non-Investment Income
☒ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			
5.			

B. Spouse's Non-Investment Income *-- If you were married during any portion of the reporting year, complete this section.
(Dollar amount not required except for honoraria.)*
☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1. 2005		self employed (attorney)
2. 2006		self employed (attorney)
3.		
4.		
5.		

IV. REIMBURSEMENTS *-- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)*
☐ NONE *(No reportable reimbursements.)*

	SOURCE	DESCRIPTION
1.	EXEMPT	
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
 Page 3 of 9

Name of Person Reporting	Date of Report
Gelpi, Gustavo A	04/25/2006

V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

☐ NONE (No reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

☐ NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE	CODE
1.	Graduate Loan Center	Student Loan		J
2.	Household Credit Services	Credit Card		J
3.	MBNA America	Line of Credit		J
4.	Caribe Federal Credit Union	Personal Loan		J
5.				
6.				
7.				
8.				

FINANCIAL DISCLOSURE REPORT
 Page 4 of 9

Name of Person Reporting	Date of Report
Gelpi, Gustavo A	04/25/2006

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "XQ" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Westhorford Intl. Ltd. New (Bermuda)	A	Interest	J	T	Exempt				
2. Smith Barney (mutual fund)	A	Dividend	J	T	Exempt				
3. Disney (common stock)	A	Dividend	J	T	Exempt				
4. Amazon Com Inc.	A	Dividend	J	T	Exempt				
5. Marvel Enterprises (common stock)	A	Dividend	J	T	Exempt				
6. John Hancock variable life policy	A	Interest	J	T	Exempt				
7. Banco Popular de P.R. (Educational IRAs)	A	Interest	J	T	Exempt				
8. Banco Popular (money market IRAs)	A	Interest	J	T	Exempt				
9. Advent Software Inc.	A	Dividend	J	T	Exempt				
10. American International Group	A	Dividend	J	T	Exempt				
11. Amgen Inc.	A	Dividend	J	T	Exempt				
12. Autodesk Inc.	A	Dividend	J	T	Exempt				
13. Biogen Ideco Inc.	A	Dividend	J	T	Exempt				
14. Cablevision Systems/Cablevision NY Group CLA	A	Dividend	J	T	Exempt				
15. Chamlog Shoppes Inc.	A	Dividend	J	T	Exempt				
16. Chiron Corp. Delaware	A	Dividend	J	T	Exempt				
17. Cisco Sys. Inc.	A	Dividend	J	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less (See Columns C1 and D3)	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = \$500,001 - \$1,000,000 S = Out (Real Estate Only) V = Other	P4 = More than \$50,000,000 W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

FINANCIAL DISCLOSURE REPORT
 Page 5 of 9

Name of Person Reporting	Date of Report
Gelpi, Gustavo A	04/25/2006

VII. INVESTMENTS and TRUSTS – Income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. Coca-Cola	A	Dividend	J	T	Exempt				
19. Comcast Corp. CLA-SPL	A	Dividend	J	T	Exempt				
20. Cree Inc.	A	Dividend	J	T	Exempt				
21. Dell Inc.	A	Dividend	J	T	Exempt				
22. Exxon Mobil Corp.	A	Dividend	J	T	Exempt				
23. Forest Laboratories Inc.	A	Dividend	J	T	Exempt				
24. Genetech	A	Dividend	J	T	Exempt				
25. General Electric Co.	A	Dividend	J	T	Exempt				
26. Genzyme Corp.	A	Dividend	J	T	Sell	7/21	J	A	n/a
27. Gillette Co. (merged with Procter and Gamble)	A	Dividend	J	T	Exempt				
28. Home Depot	A	Dividend	J	T	Exempt				
29. IAC Interactive Corp.	A	Dividend	J	T	Exempt				
30. INTEL Corp.	A	Dividend	J	T	Exempt				
31. Johnson & Johnson	A	Dividend	J	T	Exempt				
32. L3 Communications Hldgs Inc.	A	Dividend	J	T	Exempt				
33. Lehman Brothers Holdings Inc.	A	Dividend	J	T	Exempt				
34. Liberty Media Corp.	A	Dividend	J	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$1,000,000	D = \$5,001 - \$15,000 H2 = More than \$1,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D3)	J = \$1,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	T = Cash Market
3. Value Method Codes: (See Column C2)	P3 = \$250,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	P4 = More than \$5,000,000 S = Assessment W = Estimated		

FINANCIAL DISCLOSURE REPORT
 Page 6 of 9

Name of Person Reporting	Date of Report
Gelpi, Gustavo A	04/25/2006

VII. INVESTMENTS and TRUSTS — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "OO" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, mortgage, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. Lierty Media Intl. Inc.	A	Dividend	J	T	Exempt				
36. Merrill Lynch & Co. Inc.	A	Dividend	J	T	Exempt				
37. Micron Technology Inc.	A	Dividend	J	T	Exempt				
38. Microsoft Corp.	A	Dividend	J	T	Exempt				
39. Millennium Pharmaceuticals Inc.	A	Dividend	J	T	Exempt				
40. Pall Corp.	A	Dividend	J	T	Exempt				
41. PepsiCo Inc.	A	Dividend	J	T	Exempt				
42. Pfizer Inc.	A	Dividend	J	T	Exempt				
43. Sandisk Corp.	A	Dividend	J	T	Exempt				
44. Texas Instruments Inc.	A	Dividend	J	T	Exempt				
45. Time Warner Inc.	A	Dividend	J	T	Exempt				
46. Tyco Intl. Ltd.	A	Dividend	J	T	Exempt				
47. Unitedhealth Group Inc.	A	Dividend	J	T	Exempt				
48. Walt Disney Coc.	A	Dividend	J	T	Exempt				
49. WM Wrigley Jr. Co.	A	Dividend	J	T	Exempt				
50. Yahoo Inc.	A	Dividend	J	T	Exempt				
51. Electric Arts	A	Dividend	J	T	Exempt				

1. Income Code:	A = \$1,000 or less (See Columns B1 and D4)	B = \$1,001 - \$2,500 F = \$25,001 - \$100,000 J = \$115,000 or less (See Columns C1 and D3)	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 I = \$115,001 - \$50,000 O = \$250,001 - \$1,000,000 R = Cont. (Real Estate Only) V = Other	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$5,000,000 S = Assessed W = Estimated	E = \$15,001 - \$50,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market
2. Value Code:					
3. Value Method Code:					

FINANCIAL DISCLOSURE REPORT
 Page 7 of 9

Name of Person Reporting	Date of Report
Gelpi, Gustavo A	04/25/2006

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. Comcast Corp.	A	Dividend	J	T	Exempt				
53. United Health Group Int.	A	Dividend	J	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$115,000 or less N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$3,500 G = \$100,001 - \$1,000,000 K = \$115,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$100,001 - \$1,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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FINANCIAL DISCLOSURE REPORT
 Page 8 of 9

Name of Person Reporting	Date of Report
Gelpi, Gustavo A	04/25/2006

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

Part VII Page 1 Line 2

Smith Barney Mutual Fund - The specific name of this mutual fund is the Smith Barney Aggressive Group Fund CLA.

Part III

Filer's non-investment income is from U.S. Government salary for services as a U.S. Magistrate-Judge

FINANCIAL DISCLOSURE REPORT
 Page 9 of 9

Name of Person Reporting	Date of Report
Gelpi, Gustavo A	04/25/2006

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature



Date

4-25-06

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

 Committee on Financial Disclosure
 Administrative Office of the United States Courts
 Suite 2-301
 One Columbus Circle, N.E.
 Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		15	711	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		57	276	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends		57	000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		660	450
Real estate owned-add schedule		740	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property				Student Loan			753
Cash value-life insurance		3	212	Personal Loan		7	800
Other assets itemize:				Auto Loans		60	014
IRA		3	000				
Thrift Savings Account		4	967				
				Total liabilities		729	017
				Net Worth		152	649
Total Assets		881	666	Total liabilities and net worth		881	666
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

Financial Statement
Net Worth Schedules

<u>Listed Securities</u>	<u>Value as of 4/21/06</u>
ADVS	612.60
AMZN	545.70
AIG	1,598.50
AMGN	1,357.60
ADSK	648.00
BBBY	589.95
BIIB	1,124.50
CVC	1,106.80
CHRS	574.00
CHIR	1,440.00
CSCO	1,146.20
KO	1,676.40
CMCSK	1,576.30
CREE	605.60
DELL	953.36
DISCA	162.47
ERTS	569.30
EXPE	459.25
XOM	965.40
FRX	1,097.75
DNA	801.80
GE	1,366.80
GENZ	612.50
HD	1,424.85
IACI	758.00
INTC	1,540.00

JNJ	1,463.16
LLL	1,277.10
#GROWA	2,336.21
LEH	2,333.70
LBTYA	84.44
LBTYK	81.44
L	924.00
MVL	1,514.25
MER	2,012.75
MU	1,154.30
MSFT	1,627.87
MLNM	647.50
PLL	1,082.55
PEP	862.65
PFE	1,371.70
PG	1,417.00
SNDK	1,320.44
#SBCX	855.60
TXN	1,768.00
TWX	1,187.20
TYC	805.45
UNH	1,255.00
DIS	1,414.07
WFT	2,424.00
WWY	238.00
YHOO	<u>504.15</u>

Total Listed Securities	57,276.16
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Real Estate Owned

Personal Residence	\$740,500.00
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Real Estate Mortgage Payable

Personal Residence	\$660,450.00
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III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

As an Assistant Federal Public Defender I provided legal assistance and representation to indigent criminal defendants (i) charged before the United States District Court for the District of Puerto Rico, (ii) who appealed their sentence of conviction to the United States Court of Appeals for the First Circuit, or, (iii) who sought post-conviction *habeas corpus* relief. The scope of my legal representation of these individuals was not simply limited to reviewing the evidence in each case, researching the law and filing motions, appearing in court, and advising the client. A considerable portion of the time spent in representing each client was devoted to investigating the client's personal and family background and meeting with relatives. This was done in order to obtain possible mitigating evidence, and more important, assist the client, as well as his relatives, to understand his or her legal predicament and thus, determine the appropriate action to take (i.e., plea guilty pursuant to an agreement with the government or without an agreement, cooperate with the authorities, or, stand trial).

As the Deputy Attorney General for the Office of Legal Counsel at the Department of Justice of the Commonwealth of Puerto Rico, I was active in aiding the Attorney General's efforts to successfully lobby for additional federal and state funding for the Puerto Rico Legal Aid Society. In the past, the Legal Aid Society's financial woes had severely affected the proper functioning of the Commonwealth's justice system. Because state prosecutorial resources constantly increased, it was extremely important to also afford the non-profit organization the means to adequately guarantee its ever-increasing clientele the legal representation required by the federal and state Constitutions. The Legal Aid Society is the only practicable means in the Commonwealth for indigent criminal defendants to obtain quality legal representation.

While at the Commonwealth Department of Justice, I also supervised the Drug Court Program, which was geared toward assisting first time, non-violent offenders with substance abuse problems. During my tenure, a considerable portion of state and federal drug court funds were distributed to the Legal Aid Society.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I do not belong, nor have ever belonged to any such organization.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There is no such Commission in my jurisdiction. I was recommended to the White House by Congressman Luis Fortuño, Resident Commissioner for the Commonwealth of Puerto Rico as one of several candidates to fill a judicial vacancy in the District of Puerto Rico which arose on June 10, 2005. On May 17, 2005, I was interviewed for said position by Associate Counsel to the White House, and a representative of the U.S. Department of Justice. When a second judicial vacancy arose in the District of Puerto Rico on November 15, 2005, I was called by the White House and informed that I was a prospective judicial nominee to occupy the same.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this “judicial activism” have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

An Article III Judge is under the constitutional obligation to resolve cases and controversies arising under the Constitution and Laws of the United States, and as to which all constitutional and statutory jurisdictional requirements are strictly met. If these requisites are not present, then the Judge cannot exercise his limited Article III jurisdiction. When ruling on a given matter, a Judge must apply the law to the particular facts of each case, and cannot impose his own views or moral judgment as to what the law ought to be, or how it must be executed; that is exclusively the role of the Legislative and Executive branches of our Government, respectively. When required to interpret a law, the Judge must consider its legislative history and purpose, as well as the norms of statutory construction. The Judge must also consider binding judicial precedent. Under no circumstance, however, may an Article III Judge use the Constitution of the United States as a personal mechanism for legislating *de facto* in the guise of a judicial decision.

AFFIDAVIT

I, GUSTAVO A. GELPI, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

No. 500

April 20, 2006
(DATE)

[Signature]
(NAME)



[Signature]
(NOTARY)

Senator COBURN. Thank you. All right. Well, we will start out with some questions. The record will be left open for questions by other members of the Committee for one week, and staff should advise members of such.

Mr. Holmes, you have considerable experience in the area of counterterrorism. As an Assistant U.S. Attorney, you served on the prosecution team for the Oklahoma City bombings and then after September 11, 2001, you served as coordinator for your office's counterterrorism efforts.

What did you learn from those experiences?

Mr. HOLMES. They were valuable experiences to me, Dr. Coburn, in terms of understanding the importance of the threat that faces our Nation from terrorism and the importance of taking vigorous steps to address that threat.

Senator COBURN. Do you feel that you have the ability to separate your ideology from your judicial philosophy?

Mr. HOLMES. Thank you, Dr. Coburn, for that question, because the answer is affirmatively and strongly yes. I very much understand the role of a judge, and the role of a judge is to be fair and impartial and to follow the law. Of all the things I can commit to, I can commit to following the law and following precedent. And my personal views and ideology, to the extent that I have an ideology, would be put aside and is not relevant for that role.

Senator COBURN. All right. Thank you.

Most of your experience has been in trial courts. How has that prepared you to be a circuit court judge?

Mr. HOLMES. Thank you, Dr. Coburn. As it relates to that question, I believe it has given me tremendous preparation for the role of an appellate judge. An appellate judge has an opportunity to only review the record, and to understand the context of the record, it often takes experience in the courtroom. The dynamic of the courtroom is very useful to the understanding of the cold record and what is going on and what the lawyers are trying to do and the constraints that the judge has to operate under in making decisions. And so I believe that that trial experience has given me ample preparation for the role of an appellate judge.

Senator COBURN. You also in your career have found time to write and speak on a variety of issues. Some of those that you have written about are matters of public controversy. If you are confirmed, will you be able to put aside the import of these writings and judge each case that comes before you with an open mind bearing on stare decisis?

Mr. HOLMES. I very much appreciate that question, Dr. Coburn, because, again, the answer is absolutely yes. I recognize very clearly the distinction between the role of a writer on social policy issues in their personal capacity and the role of a judge in adjudicating the rights and liberties of individual litigants. And in that second, that latter role, it is inappropriate for me to import my personal views on policy issues into the decisionmaking process. My job in that role is to follow the law, to follow the precedent that I am bound by, the Supreme Court precedent, and I plan to do that, if confirmed.

Senator COBURN. So on questions of affirmative action, there is no doubt in your mind you would follow stare decisis as set by the

Supreme Court on cases that would come before you with regard to that?

Mr. HOLMES. If confirmed, Dr. Coburn, there is absolutely no doubt in my mind that I would follow the law and I would follow the binding precedents and adhere to stare decisis.

Senator COBURN. Thank you, Mr. Holmes. Judge Gelpi, you have already had a distinguished career as both an advocate, as a public defender, and the Solicitor General for Puerto Rico. More recently, you have served on the other side of the bench as United States magistrate judge. Having seen judicial proceedings from both sides, would you speak briefly about the role and significance of judicial temperament?

Judge GELPI. Well, yes, thank you, Senator.

Senator COBURN. Could you pull the mike a little closer to you?

Judge GELPI. Yes, sir.

Senator COBURN. Thank you.

Judge GELPI. Thank you, Senator. Judicial temperament, particularly, I believe, at the district court level, is very important. We come face to face every day with attorneys, litigants. We have law enforcement agents, witnesses, and we have to deal with the public on a day-to-day basis in the courtroom and then in chambers, many times with attorneys. I believe it is very important for a judge to have temperament. You have to be able to listen to counsel, listen to both parties, never be predisposed before you listen to your case, because in my experience I have cases where you sort of have a gut feeling at the beginning, but you listen carefully to the parties, and then when you weigh the evidence or you listen to the final arguments, you realize you may have been wrong or you can change your mind. And it is very important to have that open-mindedness at all times.

It is very important also to be courteous to all the parties, the litigants. They are human beings, just like the court, like the judge. It is also equally important to expect that same conduct and that same treatment from the parties and from counsel towards the court. And I think the court has to set an example, and if the court sets the example, the bar and counsel and litigants and everybody who appears before the court would follow.

Thank you.

Senator COBURN. Do you have a judicial philosophy that you could give in your testimony before this Committee?

Judge GELPI. I do not have a particular judicial philosophy. My own philosophy is to work as hard as I can and to apply the laws and Constitution of the United States at the trial level. That is what we do. We are not there to make new laws, to enlarge the Constitution or abridge the Constitution. That is the Supreme Court's role. We have to follow precedent from not only the Supreme Court but also from the First Circuit. So in that respect, that is my position.

Senator COBURN. That sounds like a judicial philosophy to me. [Laughter.]

Senator COBURN. You must know the district court and its caseload well. What are the unique challenges of that court?

Judge GELPI. Well, in Puerto Rico, I would say that the most unique challenge is the volume of criminal cases. We are one of the

districts with the most multi-defendant cases, so what is most challenging is you have to be able to manage the criminal docket effectively. I have been a magistrate judge now for 5 years. I truly believe that in a big district like ours, with such a criminal docket, you have to rely on magistrate judges. So I hopefully will have, if confirmed, a successor who will assist me, as I have assisted the district court judges. Scheduling is extremely important and also just moving the cases along. And if you do that with the criminal docket, then the civil docket will also fall into place. And that is also very important because the civil litigants are also entitled to their day in court.

Senator COBURN. All right. Thank you.

Mr. Jordan, how have your private experiences as a private trial attorney prepared you to sit in the position as a judge?

Mr. JORDAN. Thank you, Senator. As a private attorney, primarily involved in civil litigation, I have been a part of that process my entire career. I frequently practice in the Federal courts within our State. I know the procedures. I know how the trials work. I have seen it. I have been there, I have done that on a firsthand basis. I think that it gives me a perspective as a litigator that I think will be helpful as a judge. If I am lucky enough to get confirmed and I have litigants before me, I will know what they are thinking. I will know what their hopes are. And I think that they will allow me, if I am confirmed, to help move the cases along and reach the correct result.

Senator COBURN. You have been active in the Mississippi State Bar Association. You have also volunteered your legal services on a pro bono basis. We talked about the award that you got for pro bono. Will you tell us about your work with the Bar Association and your experience with pro bono work generally?

Mr. JORDAN. Certainly. Thank you, Senator. I became involved with the Mississippi Bar and also with the Young Lawyers Division in Hinds County, Jackson, really from the very beginning of my career. It is something that my law firm was very much supportive of. They encouraged us to get involved, and many of us did. One of the first leadership positions I had was as the President of the Jackson Young Lawyers Association, which is made up of roughly 300 attorneys. I thought that that was a great honor, and I thoroughly enjoyed my time there.

I have also served on the Board of Directors for the Hinds County Bar Association on numerous committees, which I have enjoyed tremendously, and also on the State bar level.

In terms of pro bono, I believe that it is a responsibility of all attorneys to dedicate a portion of their time to service for the disadvantaged. One of the first times I was ever in Federal court was pro bono representation on behalf of a hospice that could not afford to pay legal fees. Throughout my career, I think I have been fairly consistent about donating my time. Roughly 2 years ago, I recognized that there was a problem at the Stewpot Legal Clinic. This is an inner-city shelter for the homeless, and every Tuesday there is an attorney there giving free legal advice. But the problem was that they were having a hard time finding attorneys willing to show up to donate their time. So I asked if I could run the pro-

gram. I am pleased that they allowed me to do it. It has been very rewarding for me to go down there.

The type of law I practice typically deals with companies, and there is a lot of money involved. But when you sit down in a small room with somebody who has a very serious personal problem and you can help them with that problem, it is a tremendously rewarding experience.

I have also worked down on the Gulf Coast some, which was—you know, those people are in serious distress, and they needed the assistance of counsel. So I view that as a great opportunity, and I have really enjoyed that part of my practice.

Senator COBURN. What do you see as your role as a judge in the Southern District of Mississippi?

Mr. JORDAN. Well, I believe the role of a trial judge is a limited role. If I am fortunate enough to be confirmed, there are precedents that the trial judges must follow. So many of the substantive areas of law have been addressed, whether it is Fourth Amendment rights, the scope of the Commerce Clause. You know, in my view it is not a discretionary issue for the trial judge.

I really view the trial judge more as being on the front line of litigation and helping the cases get through the legal process.

Senator COBURN. All right. Thank you.

Would any of you like to add anything else for the record or make additional statements?

Mr. HOLMES. No, sir.

Mr. JORDAN. No, sir.

Judge GELPI. No, sir.

Senator COBURN. Well, on behalf of the Judiciary Committee, I want to thank you for appearing today. We will leave the record open for one week until 5:00 p.m. on Thursday, June 22nd, for members to submit written questions. If you do receive written questions, we would ask you to return them as promptly as you can. I can also tell you from my experience on the Judiciary Committee, delay in returning written questions is something that is not dealt with in a very kind way and not favorably toward your nomination. So I would advise you to be very prompt in your response to any questions that you do submit.

With that, this hearing is adjourned.

[Whereupon, at 2:42 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS



JEROME A. HOLMES
Direct Tel: 405.234.3245
Direct Fax: 405.272.5969

holmesj@crowedunlevy.com

June 28, 2006

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Attached are my responses to written questions from Senator Leahy, Senator Kennedy, Senator Feingold, and Senator Durbin

Sincerely,

JEROME A. HOLMES

cc: The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

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Responses of Jerome A. Holmes
Nominee to the United States Court of Appeals for the Tenth Circuit
to the Written Questions Submitted by U.S. Senator Patrick J. Leahy

- 1) You have written numerous columns and letters to publications on such topics as affirmative action, discrimination, juror racial bias and school vouchers. In one column, you described raising concerns about racial prejudice at criminal trials as “harmful” because it “bolster[s] the cynical view that jurors vote along racial lines,” which “undermines public confidence in the fairness of the criminal justice system.” In fact, you argued that it is the focus on the problem of racial bias in jury selection – as opposed to the racial bias itself – that harms the criminal justice system, writing that this focus “may actually give the green light to jurors to exercise arbitrary power in the jury box when their racial number allow it, as they apparently did in the O.J. Simpson case.”

- A. Do you agree that discrimination in a criminal trial serves to undermine the fundamental fairness of the proceedings?

Response: Racism is a negative influence in any societal context. In certain circumstances, the U.S. Supreme Court has held that racial discrimination in criminal trials violates the U.S. Constitution. If confirmed, I would faithfully adhere to Supreme Court precedent.

- B. Do you think that a jury chosen in part through the improper use of peremptory challenges meets the Sixth Amendment’s guarantee of an impartial jury?

Response: The question of whether the racially discriminatory use of peremptory challenges (i.e., the “improper use” of such challenges) is compatible with the Sixth Amendment’s guarantee of an impartial jury has been the subject of U.S. Supreme Court decisions, including *Holland v. Illinois*, 493 U.S. 474 (1990). If confirmed, I would carefully following Supreme Court precedent and other controlling legal authorities on this issue.

- 2) The Supreme Court has long recognized that racial bias in jury selection undermines constitutional guarantees to a fair trial, establishing in the landmark 1986 decision *Batson v. Kentucky* that striking jurors on the basis of race is unconstitutional. In contrast to your statement that accusations of racial bias are merely “cynical,” *Batson* was based on evidence showing patterns of race discrimination in jury selection and has been upheld by the Supreme Court many times.

- A. How does your view that it is “harmful” and “cynical” to raise concerns about racial bias in jury selections comport with the Supreme Court’s well-settled law that striking jurors on the basis of race is unconstitutional?

Response: For clarification, please allow me to note that the referenced article did not express any general belief that accusations of racial bias are cynical or harmful. I used the term "cynical" in the article, which related to race and the jury system, to describe the view that "jurors vote along racial lines, irrespective of the evidence and the law." Of course, our system of jury trials is based on the notion that jurors do nothing of the sort. Moreover, in the same piece, I deemed specific allegations of racial bias to be "harmful" to the administration of justice because, in my view, they were clearly without factual support. I have never espoused the view that claims of racial bias are generally harmful to the justice system. If confirmed, I would give very serious consideration to claims of racial bias in jury selection and faithfully apply the holdings of *Batson* and its progeny.

B. In your view, in the balance between "public confidence in the criminal justice system" and the commands of the Constitution, what principles win out? Doesn't following the Constitution's requirements of fairness and equality bolster public confidence in the criminal justice system?

Response: If confirmed, my responsibility would be to apply the Constitution as interpreted by Supreme Court and Tenth Circuit precedent. As noted above, I would give very serious consideration to claims of racial bias in jury selection and faithfully apply the holdings of *Batson* and its progeny.

3) In a newspaper column you wrote after the Supreme Court's 2003 decision upholding the University of Michigan's Law School's limited use of race and ethnicity in admissions, *Grutter v. Bollinger*, you criticized the Supreme Court for missing an "important opportunity to drive the final nail in the coffin of affirmative action" and said, "[t]he court did not go far enough: Affirmative action is still alive." In addition, you described affirmative action scholarship programs as involving classifications that are "constitutionally dubious and morally offensive."

A. Given your legal view that affirmative action programs are "constitutionally dubious," and should be eliminated, how can you assure us that litigants appearing before you in affirmative action cases would get a fair hearing?

Response: Throughout my career, I have demonstrated the utmost respect for the rule of law and adhered to the highest standards of professionalism and legal ethics in my dealings with all participants in the legal process, particularly opposing counsel and their clients. For example, as a prosecutor, I took to heart the words of the U.S. Supreme Court in *Berger v. United States*, 295 U.S. 78, 88 (1935) (describing a prosecutor as "in a peculiar and very definite sense the servant of the law"). If confirmed as an appellate judge, I would continue my course of conduct in displaying the utmost respect for the rule of law and all litigants who would appear before me. The result would be an even-handed application of legal principles in the affirmative action context, as well as in other areas.

- B. As an appeals court judge, how would you address the conflict between your own legal conclusion about what the Constitution demands and the conclusions reached by the Supreme Court in its decisions?**

Response: If confirmed as an appellate judge, in litigation involving affirmative action, I would faithfully follow the governing law as expressed in U.S. Supreme Court opinions and other legal authorities. It would be my solemn duty to do so. My personal views on affirmative action would not be a factor in the decision-making process. In addition, judges must decide each case on its merits, based on the specific facts and applicable law.

- 4) In an article in *The Economist*, you criticized African-American civil rights leaders for maintaining what you described as a “socially-constructed colour line...” In another publication, you dismissed a doctor’s race discrimination complaint based on his colleagues’ “negative reactions to his dreadlocks” as “naïve.”**

Given your comments belittling concerns about the persistence of race-based barriers in this country, how will you maintain objectivity when applying constitutional and statutory remedies for race discrimination? What about when fact patterns arise similar to those you have dismissed as “naïve”?

Response: I recognize a clear line of demarcation between considering claims of race-based barriers (a) in the context of periodical opinion pieces, and (b) in a setting in which I would be called upon, if confirmed, to assess and rule upon the legal sufficiency of such race-based claims. In the latter adjudicative setting, my personal views would be irrelevant. My solemn obligation would be to give the parties a fair hearing and to follow the applicable law. The U.S. Constitution and controlling legal authorities would provide the objective standards that would guide and define the boundaries of my decision-making.

- 5) You have been an outspoken critic not only of affirmative action programs and efforts to combat race discrimination, but of African-American civil rights leaders who support them, calling them “ideologically bankrupt.” You have called into question the sincerity of civil rights organizations opposed to school vouchers by describing them as having “longstanding ties to school employee labor unions, which view vouchers as a dangerous threat to the educational status quo, in which teachers bear little or no accountability for their students’ educational failures.” In another article, you described a defense attorney’s concerns about racial bias in jury selections as “philosophically offensive.”**

If confirmed, is that how you will treat litigants appearing before you with whom you disagree? What about disagreements with fellow judges sitting with you on appellate panels?

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Response: If confirmed as an appellate judge, I would treat litigants who would appear before me with the utmost respect and civility. During the course of my career, I have consistently treated all participants in the legal process in this manner. As a judge, my solemn obligation would be to fairly adjudicate the claims of the parties under the applicable legal standards. In this significant respect, as well as many others, the role of the judge and the role of the opinion-article writer are very different. If confirmed, I would strive to build and maintain a collegial environment with my fellow judges. I have served on the boards of numerous legal and civic organizations and have been effective at building consensus and fostering a positive work environment.

- 6) For more than two years, you were a member of the Men's Dinner Club of Oklahoma City, the membership of which is restricted to men. You did not resign your membership until February 2, 2006, less than two weeks before your initial nomination to be United States District Judge for the District of Oklahoma.

- A. You asserted in your questionnaire that you did "not perceive the Club as practicing invidious discrimination." If not, what types of actions comprise discrimination with which you would not want to be associated?

Response: I condemn in the strongest terms any form of invidious discrimination. I would not knowingly be a member of any organization that harbored or expressed any bias against women, or any other groups on the basis of immutable characteristics. In particular, I would not be a member of any organization that limited in any material way the professional opportunities in the community (including networking opportunities) of women, or racial and ethnic minorities, by virtue of the impact of its membership restrictions. When I joined the Men's Dinner Club, I did not perceive it to be such an organization. Its membership consisted of widely respected business, community, and government leaders, including at least two judges of Oklahoma's courts of last resort. I recognized in February 2006 that some might perceive the Men's Dinner Club as being an improper organization of the kind discussed above. That was unacceptable to me. I would not allow my association with any group to even raise a suggestion that my condemnation of invidious discrimination is anything less than unequivocal. Accordingly, I resigned.

- B. Given your membership in a gender exclusive club, how can you assure us that, if confirmed, you will fairly approach claims of gender discrimination and inequality?

Response: My personal experience should provide some assurance. I have suffered racial prejudice in my life. I also have endured the negative feelings that come from being treated as an outsider because of an immutable characteristic – in my case, race. This experience has caused me to abhor invidious discrimination, including discrimination on gender grounds. Further, it has contributed to my interest in assuming a leadership role in the diversity initiatives of my law firm, Crowe &

Dunlevy. I am Chair of its Diversity Committee. One element of the Committee's charge is the consideration of initiatives that will ensure that the firm continues to be a leader in Oklahoma in the retention and promotion of women. Lastly, I believe that my professional record including my time as a federal prosecutor clearly demonstrates that I am firmly committed to the rule of law and the fair treatment of all participants in the legal process. If confirmed, I would faithfully follow the governing law with regard to gender discrimination claims.

**Responses of Jerome A. Holmes
 Nominee to the United States Court of Appeals for the Tenth Circuit
 to the Written Questions Submitted by U.S. Senator Edward M. Kennedy**

You've been quoted as saying that the statement society sends by executing a convicted murderer "is not materially diminished by the fact that in the implementation of the death penalty mistakes are made."

Q: How do you think the court system should address the possibility of mistakes in the imposition of the death penalty?

Response: At the trial and appellate levels, federal judges should strive to ensure that the death penalty is imposed only in the context of proceedings that are completely fair and that afford the defendant the full panoply of rights the defendant is entitled to under the U.S. Constitution and other laws.

Q: Do you think the current system has sufficient safeguards against mistakes in imposing capital punishment? How do you respond to the increasing number of death row inmates exonerated by DNA evidence? What safeguards are necessary to protect innocent people from execution?

Response: Respected commentators have voiced serious concerns about the adequacy of safeguards against mistakes in the death penalty system and have pointed in particular to cases where state court defendants on death row have been exonerated by DNA evidence. This is a matter for policymakers to consider. However, if confirmed, I may be called upon to rule on the legal adequacy of death penalty safeguards. In doing so, I would be obliged to carefully follow U.S. Supreme Court precedent and other controlling legal authorities. Judicial review is itself a safeguard to protect the rights of all defendants. If confirmed, I would work tirelessly to ensure that the constitutional rights of the defendants in cases before me were protected.

Q: How do you feel about racial disparities in the criminal justice system, such as differences in the length of sentences and in the imposition of the death penalty? Is racism a negative influence in the system?

Response: Racism is evil. Insofar as it exists in any societal system, it would be a negative influence. Legal scholars and practitioners have discussed and debated the implications of racial disparities in the criminal justice system. Such disparities have been, and will likely continue to be, the basis for litigation. If confirmed, I may be called upon to rule on claims based upon racial disparities. Therefore, as a judicial nominee, I respectfully submit that it would be inappropriate for me to offer my personal feelings about racial disparities.

At your hearing, you testified that you would be able to set aside your personal views and ideology in order to follow legal precedent. You said, "I recognize very clearly the distinction between the role of a writer on society policy issues in their personal capacity and the role of a judge in adjudicating rights and liberties of individual litigants, and in that latter role it is inappropriate for me to import my personal views on policy issues into the decision-making process."

Q: In your columns entitled, "The Court Misses An Opportunity," Daily Oklahoman, July 2, 2003 and "A Step Closer to King's Dream," The Daily Oklahoman, Jan. 19, 2004, please identify any statements which express your personal views that were inconsistent with the law on affirmative action at the time these columns were published. Describe how your personal views were inconsistent with the law.

Response: If confirmed, in litigation involving affirmative action, I would faithfully follow the governing law as expressed in U.S. Supreme Court opinions and other legal authorities. My personal views on affirmative action would not be a factor in the decision-making process. Accordingly, as a judicial nominee, I respectfully submit that it would not be appropriate for me to detail my views on affirmative action and compare and contrast them with existing

law on the subject. If confirmed, I would be obligated to follow the law in the affirmative action area (and in other areas as well), and I would do so.

At your hearing, it was mentioned that you chair your law firm's diversity committee. When did you become chair of that committee? What are the objectives of that committee? On its website, Crowe & Dunlevy states that the firm is a leader in "hiring and promoting the best and brightest lawyers that are women, racial and ethnic minorities or physically disabled."

Response: Approximately a little more than a month after I joined Crowe & Dunlevy in August 2005, the Diversity Committee was born out of discussions between me and several Directors of the firm, including the immediate past President of the firm. When it was established, in approximately late September 2005, the Diversity Committee was an informal initiative of the then-President. I was asked to Chair the Diversity Committee at that time and I agreed to do so. In April 2006, in large part to underscore the importance of diversity to the firm, the Diversity Committee became a formal standing committee of the firm. I was a key participant in the discussions that led to this positive change. The new firm President asked me to assume the Chair position of the Diversity Committee and I agreed to do so. From its conception through the present, the Diversity Committee primarily has focused on coordinating and participating in the firm's efforts (a) to recruit and retain top-notch lawyers who are racial and ethnic minorities; and (b) to be a leader in promoting diversity in the Oklahoma legal profession, including supporting certain initiatives to increase the number of racial and ethnic minority lawyers in Oklahoma.

Q: As chair of the diversity committee, do you work to accomplish those goals?

Response: I have worked hard to accomplish the goals of the Diversity Committee. I have had numerous discussions with the leadership of the Recruitment Committee concerning strategies for recruiting racial and ethnic minority lawyers and have personally been involved in certain recruitment initiatives related to such lawyers. I have participated in the implementation of the Crowe & Dunlevy Minority Scholars Program under which two talented minority law students at the University of Oklahoma College of Law each receive

a \$4,000 scholarship during each of their three years of legal study. I also have devoted numerous hours to coaching a mock trial team at a predominately African-American high school in Oklahoma City. This coaching endeavor reflects the firm's interest in increasing the size of the pool of racial and ethnic minority students who will be situated by virtue of education and interest to apply to law school and thereby enter the ranks of the legal profession.

Q: Are these actions consistent with your public condemnation of race-conscious practices?

Response: I would respectfully submit that my writings referenced in the question are consistent with the work I have done as Chairman of the Diversity Committee and as the mock trial coach at a predominantly African-American high school.

In your Questionnaire, you indicated that you were a member of a club whose membership was restricted to men. You indicated that you resigned, effective February 2, 2006.

Q: Did you communicate your resignation in writing? If so, please attach a copy of that letter. If you communicated your resignation orally, please indicate how you communicated your resignation and what was said.

Response: I communicated my resignation in writing and a copy of the letter is attached.

In response to your Questionnaire, you provide dates which indicate that President Bush forwarded your nomination less than two weeks after you submitted your resignation from the club.

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Q: When did you first express in writing to the Oklahoma Senators your interest in a judicial nomination, as you stated you did in response to Question III.3 of your Questionnaire?

Response: I first expressed in writing to the Oklahoma Senators my interest in a judicial nomination on approximately January 22, 2005.

Q: On which date were you notified that you would be nominated to the district court position?

Response: I was notified that I actually would be President Bush's nominee for the district court position on approximately the same day my name was submitted to the U.S. Senate, February 14, 2006.

Q: What is your reason for failing to resign from the club any earlier than February 2, 2006?

Response: I condemn in the strongest terms any form of invidious discrimination. I have suffered racial prejudice in my life. I also have experienced the negative feelings that come from being treated as an outsider because of an immutable characteristic – in my case, race. I would not knowingly be a member of any organization that harbored or expressed any bias against women, or any other groups on the basis of immutable characteristics, or that otherwise engaged in invidious discrimination. In particular, I would not be a member of any organization that limited in any material way the professional opportunities in the community (including networking opportunities) of women, or racial and ethnic minorities, by virtue of the impact of its membership restrictions. When I joined the Men's Dinner Club, I did not perceive it to be such an organization. Its membership consisted of widely respected business, community, and government leaders, including at least two judges of Oklahoma's courts of last resort. I recognized in February 2006 that some might perceive the Men's Dinner Club as being an improper organization of the kind discussed above. That was unacceptable to me. I would not allow my association with any group to even raise a suggestion that my condemnation of invidious discrimination is anything less than unequivocal. Accordingly, I resigned.

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Responses of Jerome A. Holmes
Nominee to the United States Court of Appeals for the Tenth Circuit
to the Written Questions Submitted by U.S. Senator Russell D. Feingold

1. In a 2004 presentation to the Leadership Oklahoma Class XVIII, you stated that "the death penalty system nationwide ... is far from perfect," but that the mistakes made in its implementation do not materially diminish the statement society is sending through its enforcement -- "that certain conduct and the perpetrators of it deserve to die." Further, you stated that "society has a strong interest in reinforcing the social contract with its members by making a clear statement that the conduct of the perpetrators is outside the conceivable bounds of anything the community can tolerate -- that perpetrators have forfeited their right to live in our community."

- (a) Given your statement to the Leadership Oklahoma class, are you concerned about the high rate of constitutional errors in capital punishment trials and sentencing proceedings? What about the demonstrated problem of innocent people being sentenced to death?

Response: I am very concerned whenever the criminal justice system does not function with utmost fairness and in a manner that is designed to produce -- to the extent that it is humanly possible -- accurate outcomes. That concern is heightened in the death penalty area because of the finality of the sanction. If confirmed, I would seek to ensure that the due process rights of every defendant are protected.

- (b) You seemed to suggest that mistakes in a system of capital punishment are acceptable in order to "mak[e] a clear statement." Is executing an innocent person an acceptable mistake? What other kinds of mistakes are tolerable?

Response: The criminal justice system should be administered in a manner that eliminates mistakes - to the extent that it is humanly possible - and yields accurate outcomes. If confirmed, I would work tirelessly to help ensure that the system functions in such a manner.

- (c) Do you believe that capital punishment is a deterrent to crime?

Response: If confirmed, I would strive to ensure that the death penalty is imposed only in the context of proceedings that are fair and that afford the defendant the full panoply of rights the defendant is entitled to under the U.S. Constitution and other laws. The deterrent effect of the death penalty is a matter of significant debate in social science circles and is a factor for policymakers to consider. If confirmed, I would carefully follow the binding

06/28/2006 13:57 FAX

016/023

precedent of the U.S. Supreme Court and other governing legal standards as to the death penalty.

- (d) At the hearing, you stated that your job, as a judge, would be “to follow the law, to follow the precedent [that you are] bound by, the Supreme Court precedent,” and that you “plan to do that, if confirmed.” Other than your personal assurances, what in your record demonstrates that as a federal judge you will fairly and even-handedly consider cases where the death penalty is sought?

Response: Throughout my career, I have demonstrated the utmost respect for the rule of law and adhered to the highest standards of professionalism and legal ethics in my dealings with all participants in the legal process, especially opposing counsel and their clients. As a prosecutor, I took to heart the words of the U.S. Supreme Court in *Berger v. United States*, 295 U.S. 78, 88 (1935) (describing a prosecutor as “in a peculiar and very definite sense the servant of the law”). As I conceived of it, my job was not to obtain convictions but to ensure that the law was fairly and properly enforced as to particular defendants. To be sure, while a prosecutor, I was an advocate and argued on behalf of my client, the United States. If confirmed, however, I would no longer be an advocate and all elements of partiality would be removed from my decision-making process. Yet, as a judge, I would continue my course of conduct in displaying the utmost respect for the rule of law and all litigants who would appear before me. The result would be an even-handed application of legal principles in the death penalty context and in others as well.

2. In a 2002 *Daily Oklahoman* opinion piece, you acknowledge “that racial prejudice still exists in the jury box,” but state that existing legal procedures, such as the *voir dire* process of judicial selection, sufficiently “excise the malignancy of racial bias” from jury deliberations.

- (a) Is that still your belief?

Response: In 2002, I wrote articles and expressed opinions on legal issues as a private citizen. If confirmed, some of those issues - including questions relating to the constitutional sufficiency of the *voir dire* process - may come before me in the factual context of a particular case. Accordingly, I respectfully maintain that it would be inappropriate as a judicial nominee for me to offer personal opinions about the sufficiency of the *voir dire* process to address racial prejudice in the jury box. As a judge, I would be required to consider each case on its own merits, without prejudging any issues. I would carefully follow the binding precedent of the U.S. Supreme Court and other governing legal standards in assessing the sufficiency of the *voir dire* process in any particular case.

(b) What proof, in your view, would be adequate to demonstrate racial bias by a jury or juror, or in jury selection?

Response: If confirmed, I would scrupulously follow U.S. Supreme Court precedent and other controlling legal standards, in determining the appropriate quantum of proof to warrant a finding of racial bias by a jury or juror, or in jury selection.

(c) The use of peremptory challenges by both prosecutors and defense attorneys remains controversial because of the possibility of allowing racial bias to infect the jury selection process. Do you think that peremptory challenges present a problem in our criminal justice system?

Response: Whether the use of preemptory challenges is a problem in that it arguably contributes to the level of racial bias in the jury selection process is indeed a controversial topic that is debated by practitioners and legal scholars. If confirmed, however, this debate would play no role in my decision-making process. I would carefully follow the binding precedent of the U.S. Supreme Court and other governing legal standards as to preemptory challenges.

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018/023

**Responses of Jerome A. Holmes
Nominee to the United States Court of Appeals for the Tenth Circuit
to the Written Questions Submitted by Senator Richard Durbin**

1. Mr. Holmes, you are an outspoken critic of affirmative action. You have written numerous articles and letters to the editor complaining about affirmative action. In the last four years, you have made the following statements:

• “[Affirmative action] programs sow seeds of racial disharmony and seriously undermine efforts to unite Americans as one people.”

• “[Affirmative action] policies necessarily divide us along racial lines, and establish a spoils system based upon skin color.”

• “the [Supreme] court upheld the affirmative action policy of the university’s law school. And in so doing, it missed an important opportunity to drive the final nail in the coffin of affirmative action.”

• “shelving race-based scholarship programs . . . takes us one step closer to a time when constitutionally dubious and morally offensive racial classifications will no longer impede the progress of any citizen toward full achievement of the American dream.”

Section 455 of Title 28 of the United States Code states: “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”

Based on the statements you have made expressing hostility to affirmative action, I question whether you would have an open mind on this issue and I believe your impartiality might reasonably be questioned in all cases and proceedings relating to affirmative action.

Others share this belief. In a June 14, 2006 letter written to the Senate Judiciary Committee expressing “grave concern” about your nomination, a broad coalition of civil rights organizations – including the NAACP, the NAACP Legal Defense & Educational Fund, the Mexican American Legal Defense and Educational Fund, the Leadership Conference on Civil Rights, the National Urban League, and many others – stated: “His criticism of affirmative action raises serious questions about whether litigants could expect him to rule impartially and fairly on claims that turn on legal principles of affirmative action, and about Mr. Holmes’ approach to antidiscrimination laws more broadly, if he is confirmed.”

Although you testified at your nomination hearing that “I would follow the law and I would follow the binding precedents and adhere to stare decisis” when it comes to affirmative action, many challenges to affirmative action are cases of first impression

without any precedents that are directly on point. In such instances, a judge's personal views on affirmative action inevitably come into play.

Question: If you are confirmed, will you agree to disqualify yourself in all cases and proceedings involving affirmative action and race-conscious programs?

Response: If confirmed, in litigation involving affirmative action and race-conscious programs, I would faithfully follow the governing law as expressed in U.S. Supreme Court opinions and other legal authorities. My personal views on policies relating to affirmative action and race-conscious programs would not be a factor in the decision-making process. Even if there were no governing law - that is, precedent directly on point - it would be inappropriate for a judge to rely upon personal views and I would not do so. I would employ well-settled principles of adjudication in seeking to arrive at the correct legal result. Among other things, I would focus on the language of the operative constitutional, statutory, or regulatory provision and look for guidance in the rulings of the Supreme Court and other courts on analogous issues. Accordingly, if confirmed, I do not believe that it would be appropriate for me to disqualify myself in all cases and proceedings involving affirmative action and race-conscious programs. Of course, I would always be careful if confirmed to assess whether any factors in a particular case involving affirmative action (or any other subject) required me to disqualify myself under the controlling statutory provisions and the Code of Conduct for United States Judges.

2. In its 2003 decision upholding the University of Michigan Law School's affirmative action program, the Supreme Court discussed the benefits of affirmative action in many different facets of U.S. society. Quoting from a brief filed by high-ranking retired officers of the U.S. military, the Court wrote: "a 'highly qualified, racially diverse officer corps ... is essential to the military's ability to fulfill its principle mission to provide national security.... At present, 'the military cannot achieve an officer corps that is *both* highly qualified *and* racially diverse unless the service academies and the ROTC used limited race-conscious recruiting and admissions policies.'"

Question: Do you agree or disagree with the position taken in the University of Michigan case by these high-ranking retired officers of the U.S. military? Please explain.

Response: If confirmed, it would be my solemn obligation to follow the governing law on affirmative action, including the U.S. Supreme Court's ruling in the University of Michigan case. Accordingly, I would respectfully submit that it would be inappropriate for me to express my personal views concerning elements of the Supreme Court's legal analysis in that decision.

06/28/2006 13:58 FAX

020/023

3. In a 2002 article entitled "Victimization message misguided," you wrote that "Al Sharpton, Jesse Jackson and their ilk have little to offer me or other African-Americans in the 21st century. They continue to peddle a misguided and dangerous message of victimization.... As long as Jackson and company can successfully portray African-Americans as victims to the public at large, they'll be able to wring concessions out of educational institutions like Harvard University and corporate America."

Section 455 of Title 28 of the United States Code states: "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

Based on the statements you have made expressing hostility to Jesse Jackson and Al Sharpton, I believe your impartiality might reasonably be questioned in cases and proceedings in which they or their organizations are a party.

A. Question: If you are confirmed, will you agree to disqualify yourself in all cases and proceedings in which Jesse Jackson, Al Sharpton, or their organizations are a party?

Response: My personal opinions as expressed in editorial writings would play no role in the judicial decision-making process. If confirmed, in litigation involving the referenced individuals, or their organizations, I would carefully follow the governing law as expressed in U.S. Supreme Court opinions and other legal authorities. I would always be careful to assess whether any factors in a particular case involving these men or their organizations (or any other individuals or organizations) required me to disqualify myself under the controlling statutory provisions and the Code of Conduct for United States Judges.

B. Question: What concessions do you believe Rev. Jesse Jackson has wrung out of Harvard University, other universities, and corporate America? Please describe these concessions and explain why you disapprove of them.

Response: The referenced editorial was commenting upon Mr. Jackson's interactions with Harvard University's then President over the President's counseling of an African-American professor for claimed deficient academic performance. The purpose of the editorial was to discuss the inappropriate assertion of racial bias charges. If confirmed, my solemn obligation would be to fairly adjudicate the claims of litigants under applicable legal standards. Whether I personally approved or disapproved of their claims would be

06/20/2006 13:08 FAX

021/023

irrelevant. In this significant respect, as well as many others, the role of the judge and the role of the opinion-article writer are very different. My prior writings on legal and social policy issues would have no bearing on my decision-making process, if I am confirmed as an appellate judge.

4. According to your Senate questionnaire, you were a member of an all-male organization called the Men's Dinner Club of Oklahoma City from 2003 until February 2006, when you resigned, in your words, "to avoid any possible suggestion of impropriety."

A. Question: Why does this club exclude women?

Response: I am not aware of the Club's reasons for excluding women.

B. Question: What efforts did you make, if any, to advocate for the inclusion of women in this club? If you made no such efforts, why do you believe that the club's exclusion of women was an acceptable policy?

Response: I came to the conclusion that the Club's policy of remaining all male was problematic. I would not knowingly be a member of any organization that harbored or expressed any bias against women, or any other groups on the basis of immutable characteristics. In particular, I would not be a member of any organization that limited in any material way the professional opportunities in the community (including networking opportunities) of women, or racial and ethnic minorities, by virtue of the impact of its membership restrictions. When I joined the Men's Dinner Club, I did not perceive it to be such an organization. Its membership consisted of widely respected business, community, and government leaders, including at least two judges of Oklahoma's courts of last resort.

C. Question: Why do you believe that the exclusion of women from this club does not constitute invidious discrimination?

Response: I did not believe that the Club harbored or expressed any bias against women, or any other groups on the basis of immutable characteristics. Its membership consisted of widely respected business, community, and government leaders, including at least two judges of Oklahoma's courts of last resort. I never witnessed anything even remotely anti-female in the rhetoric or conduct of the Club's membership. Like me, many of the Club's members were members of other Oklahoma civic, business, and leadership organizations in which women constitute a significant portion of the membership and occupy leadership roles. I recognized in February 2006 that some might perceive the

06/28/2006 13:33 FAX

022/023

Men's Dinner Club as being an improper organization of the kind discussed above. That was unacceptable to me. Accordingly, I resigned.

5. In your Senate questionnaire, you wrote: "The judiciary should not, however, attempt to usurp the role of the political branches through, for example, conceiving and implementing public policies from the bench, or issuing rulings that go beyond the resolution of the dispute before the court to impose wide-ranging obligations on societal groups."

A. Question: Please identify with specificity the "wide-ranging obligations on societal groups" you believe the judiciary has imposed.

Response: I was responding to the question in a general manner and was not referring to any particular circumstance.

B. Question: Please identify three cases from the past 50 years in which you believe the Supreme Court has "attempt[ed] to usurp the role of the political branches through . . . conceiving and implementing public policies from the bench." Please explain the basis for your belief.

Response: In my Senate Questionnaire response, I was not referring to the Supreme Court or any specific opinions. I was responding to the question in a general manner. If confirmed, I would be obliged to faithfully follow Supreme Court precedent. Accordingly, I respectfully maintain that as a judicial nominee it would be inappropriate for me to criticize that precedent.

C. Question: Do you believe that *Roe v. Wade*, *Brown v. Board of Education*, and *Miranda v. Arizona* are examples in which the Supreme Court "attempt[ed] to usurp the role of the political branches through . . . conceiving and implementing public policies from the bench"? Please provide a separate answer and explanation for each of these three cases.

Response: Each of the decisions cited in the question is an established precedent of the Supreme Court that has been subsequently reaffirmed. If confirmed, I would be obliged to faithfully follow Supreme Court precedent, including the three cited decisions. Accordingly, as a judicial nominee, I respectfully submit that it would be inappropriate for me to offer my personal views concerning the adjudicatory propriety of these decisions.

06/20/2006 13:08 FAX

023/023

D. Question: Do you believe that *Roe v. Wade*, *Brown v. Board of Education*, and *Miranda v. Arizona* are consistent with "strict constructionism"? Please explain.

Response: If confirmed, I would be obliged to faithfully follow Supreme Court precedent, including the three cited decisions. Accordingly, as a judicial nominee, I respectfully submit that it would be inappropriate for me to offer my personal views as to whether these decisions are consistent with a particular school of judicial decision-making.

6. In an article entitled "Why Oklahomans from A to Z Should Embrace School Choice," you set forth a zealous defense of school voucher programs. You criticized civil rights groups who oppose such programs and argued that because of their ties to school employee labor unions, "these African-American leaders may not be capable of impartially evaluating the merits of voucher programs."

In light of your own strong views about school voucher programs, if you are confirmed, litigants who came before you might also question your capability of impartially evaluating their merits.

Section 455 of Title 28 of the United States Code states: "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

Question: If you are confirmed, will you agree to disqualify yourself in all cases and proceedings involving school voucher programs?

Response: If confirmed, in litigation involving school voucher programs, I would faithfully follow the governing law as expressed in U.S. Supreme Court opinions and other legal authorities. My personal views concerning school voucher programs would not be a factor in the decision-making process. Accordingly, if confirmed, I do not believe that it would be appropriate for me to disqualify myself in all cases and proceedings involving school voucher programs. Of course, I would always be careful if confirmed to assess whether any factors in a particular case involving school vouchers (or any other subject) required me to disqualify myself under the controlling statutory provisions and the Code of Conduct for United States Judges.

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VIA E-MAIL

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

June 15, 2006

Re: Jerome A. Holmes

Dear Senator Specter:

I am honored to support the nomination of Jerome A. Holmes to the Tenth Circuit Court of Appeals. I am a deputy public defender, Chair of the ABA Commission on Homelessness and Poverty and co-founder of the Homeless Court Program.

Jerome is a member of the ABA Commission on Homelessness and Poverty. Jerome's contributions to the Commission's discussions on homeless and poverty issues are always well reasoned and articulate. He is inquisitive and insightful. Commission members rely on his input and value his contributions. I know Jerome to be thoughtful and deliberative in his approach to a myriad of issues that come before the Commission. He is respectful of diverging viewpoints that come with review of a wide range of issues such as housing, education and people involved with the criminal justice system, to name but a few.

I am confident Jerome will uphold the highest level of judicial decorum and professional integrity as a member of the Tenth Circuit Court of Appeals. I recommend Jerome A. Holmes for appointment to this important judicial position.

If you have any questions, please call me at (619) 338-4708.

Sincerely,

Steven Binder
Deputy Public Defender



June 21, 2006

The Honorable James M. Inhofe
 Senator
 United States Senate
 453 Russell Senate Office Building
 Washington, D.C. 20510

RE: Nomination of Jerome A. Holmes, Esq. to the United States
 Court of Appeals for the Tenth Circuit

Dear Senator Inhofe:

I am writing in support of the nomination of Jerome A. Holmes, Esq. to the United States Court of Appeals for the Tenth Circuit. I have known Jerome since 2001 when Jerome and I were selected for the class of Oklahoma City Leadership. In 2003, Jerome was asked to serve as a director on the board of City Rescue Mission, a local homeless shelter and rehabilitation center located in Oklahoma City.

Jerome is a recognized leader in many levels of community service. Locally, he currently serves as Chairman of the Board for City Rescue Mission. His leadership has greatly contributed to City Rescue Mission's national recognition as a model rescue mission for the homeless and poor. Nationally, he currently serves as a Commissioner on the American Bar Association's Commission on Homelessness and Poverty where his work has received national recognition. I can personally attest to Jerome's leadership ability seasoned with character and integrity.

Jerome is passionately dedicated to his profession as well as his volunteer leadership roles. He has gained the respect of his colleagues in the legal profession as well as those in the human services realm. I have witnessed Jerome in a variety of leadership situations and have always been greatly impressed with his demeanor, temperament, and thoroughness. Jerome is the first person I call when I need a fair, unbiased, carefully considered point of view---he leaves no stone unturned. I highly recommend Jerome Holmes for confirmation to the United States Court of Appeals for the Tenth Circuit---he will serve our country well.

Respectfully,


 Rev. Glenn Cranfield
 President/CEO
 City Rescue Mission

Board of Directors

Jerome Holmes
Chairman

John Higginbotham
Chairman Elect

Alfred C. Branch
Treasurer

Diana Nelson
Secretary

Jon Cargill

Bill Citty

Carl Hamilton

William Hoch, III

Ralph McCalmont

Michael Mullins

Donna Nigh

James Parrack

Patricia Parrish

President/CEO

Rev. Glenn Cranfield

"... unto the least of these . . . " *Matthew 25:40*

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WILLIAM H. HOCH
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hochw@crowedunlevy.com

June 14, 2006

The Honorable James M. Inhofe
Senator
United States Senate
453 Russell Senate Office Building
Washington, D.C. 20510

RE: Nomination of Jerome A. Holmes, Esq. to the United States Court of Appeals for the Tenth Circuit

Dear Senator Inhofe:

I am writing in support of the nomination of Jerome A. Holmes, Esq. to the United States Court of Appeals for the Tenth Circuit. I have known Jerome by reputation since 1991 when I was working for the Honorable Glenn English (D-OK) and personally since 1993 when I moved back to Oklahoma to begin my legal career.

Jerome is a known leader in a multitude of community activities. He currently serves as a Commissioner on the American Bar Association's Commission on Homelessness and Poverty where his local work has translated into national recognition. He also serves as Chairman of the Board for our local City Rescue Mission, a homeless shelter located in Oklahoma City. As a member of the board myself, I can attest to Jerome's devotion to assisting those who are less fortunate and his incredible leadership style culminating in proven results for the homeless of Oklahoma.

Hard work and dedication to his profession are just some of Jerome's hallmarks through which he has earned the respect of his colleagues in the legal profession. He always displays a judicious demeanor and temperament that will serve him and his country well on the Tenth Circuit Court of Appeals. The first person to turn the lights on and the last to turn the lights off at our office, Jerome's unwavering commitment to his chosen professional is evident. I highly recommend Jerome Holmes for confirmation – both personally and professionally – one cannot find a better nominee.

Very truly yours,

William H. Hoch
For the Firm

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JUN-14-2006 WED 03:53 PM JUDGE HOLLOWAY

FAX NO. 405 231 5788

P. 02

United States Court of Appeals

Tenth Circuit

Chambers of Judge William J. Holloway, Jr.

P.O. Box 1767

Oklahoma City, Oklahoma 73101-1767

Telephone
(405) 609-5420

Facsimile
(405) 609-5429

June 14, 2006

Honorable James M. Inhofe
SR-453 Russell Senate Office Bldg.
Delaware & Constitution Ave., NE
Washington, D.C. 20510-3603

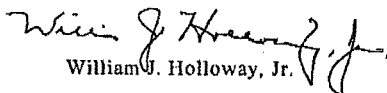
Re: Recommendation of Jerome Holmes nomination for the United States
Circuit Judge for the Tenth Circuit Court of Appeals.

Dear Senator,

I am pleased to recommend highly my former clerk, Jerome Holmes, as a splendid candidate for service as a United States Circuit Judge of the Tenth Circuit.

Jerome gave extraordinary service to me as my law clerk from August 1990 to August 1991. He is dedicated to the highest standards of intellectual service and performed his work for our court as my clerk with complete impartiality and compassion for the people whose cases were before the court. I am convinced he will give extraordinarily fine service as a fair minded and industrious judge of the Tenth Circuit Court of Appeals if his nomination is confirmed. I heartily commend Jerome for your favorable consideration.

Sincerely,


William J. Holloway, Jr.

WJH:ns

06/14/2006 4:01PM

08/28/2008 13:53 FAX

003/023



JEROME A. HOLMES
Direct Tel: 405.234.3246
Direct Fax: 405.272.5669

holmesj@crowedunlevy.com

February 2, 2006

Mr. Barry Gangwer
President
Men's Dinner Club
P.O. Box 18243
Oklahoma City, Oklahoma 73154

Dear Barry:

I have appreciated your professionalism and courtesy during our dealings in the Oklahoma City Downtown Rotary Club and the Men's Dinner Club. At this time, I think it best that I cease being a member of the Men's Dinner Club. I resign from the Men's Dinner Club and intend for that resignation to go into effect immediately. Thanks for your attention to this matter.

Sincerely,

JEROME A. HOLMES

Statement for Hearing on Jerome Holmes
by Senator James Inhofe
June 15, 2006

- I have known **Jerome Holmes** for more than five years, and I have statements I would like to share today from people who have known him even longer—we all agree that he is a man of great character, undeniably fit for the bench.
- **Holmes** grew up only blocks from here, attending **Archbishop Carroll High School** in **Northeast DC**.
- His family is no stranger to serving the public; his father, **Ryland Holmes**, was in the **Foreign Service**, which took the family to places such as **Ethiopia** and **Korea**.
- His mother, **Hattie Holmes**, was a **public school teacher** when they lived overseas and was an **administrator** at the **University of the District of Columbia** when they returned to the U.S.
- Considering his family's contributions, it is no surprise that he has devoted his life to the public good.
- He earned his **law degree** from **Georgetown University** in 1988 and his **master's** in **Public Administration** from **Harvard University** in 2000.
- He practiced law **privately** from 1991-1994 and was an **Assistant U.S. Attorney** for the **Western District of Oklahoma** from 1994-2005.
- I believe it was this distinguished service as **Assistant U.S. Attorney** that helped secure his impeccable reputation in the legal field.
- He was recently sworn-in as **Vice President** of the **Oklahoma Bar Association**, and is a current **Director** of one of **Oklahoma's premier law firms, Crowe and Dunlevy**.
- He goes above and beyond the call of duty as an active member of the **Oklahoma Bar Association's Rules of Professional Conduct Committee** and the **Commission on Homelessness & Poverty of the American Bar Association**.

- He also **Co-Chairs Crowe and Dunlevy's Diversity Committee**, and was a member of the **Oklahoma City Bombing Prosecution Team**.
- Not only has **Holmes** enjoyed a stellar professional career, he has received numerous awards for his service including the **Director's Award** from the **Executive Office of the U.S. Attorneys for Superior Performance**, the **John Marshall Award** from the **U.S. Attorney General for Outstanding Legal Achievement**, and the **FBI Commendation for Exceptional Service in the Public Interest**.
- However, perhaps most impressive is his service as **Chairman of City Rescue Mission**, an organization in **Oklahoma City** committed to **"Serving the homeless with help, hope, and healing, in the spirit of excellence, under the call of Christ."**
- At a time when our nation is faced with an onslaught of judicial activism, I firmly believe **Jerome Holmes, a man of character and principle**, will rule justly within the parameters of the law.
- Now I would like to share some remarks made by a few of his colleagues, including one from **William Hoch, a Director at Oklahoma's Crowe & Dunlevy**, who has traveled here today to represent his firm's unconditional support of **Holmes' nomination**.

Quotes on Judge Jerome Holmes

Statement by William Hoch, a friend and Oklahoma City

“Jerome is a known leader in a multitude of community activities. He currently serves as a Commissioner on the American Bar Association’s Commission on Homelessness and Poverty where his local work has translated into national recognition. He also serves as Chairman of the Board for our local City Rescue Mission, a homeless shelter located in Oklahoma City...**I can attest to Jerome’s devotion to assisting those who are less fortunate and his incredible leadership style culminating in proven results for the homeless of Oklahoma.**”

Hard work and dedication to his profession are just some of Jerome’s hallmarks...**The first person to turn the lights on and the last to turn the lights off at our office, Jerome’s unwavering commitment to his chosen professional is evident.”**

Statement by 10th Circuit Judge William Holloway

“I am pleased to recommend highly my former clerk, Jerome Holmes...**He is dedicated to the highest standards of intellectual service and performed his work for our court as my clerk with complete impartiality and compassion for the people whose cases were before the court.”**

Statement by Crowe & Dunlevy President Brooke Murphy

“...**Jerome Holmes is the paradigm of the judicial temperament and discretion that we expect of a judicial officer.** He is the most articulate and well spoken attorney I have had the opportunity to work with, and is **easily able to ponder multiple sides of complex issues and arrive at a thoughtful analysis.”**

Statement by Robert McCampbell, former U.S. Attorney for the Western District of Oklahoma, and who also works with Holmes at Crowe & Dunlevy

“**One of the most significant cases Jerome prosecuted was a public corruption case involving the Oklahoma Department of Health.** In that case, a nursing home owner had been bribing the Deputy Commissioner of the Department of Health. Jerome tried the case, won convictions, and won the appeals. **The case was significant not only because it was a complex and difficult public corruption case, but because it led to material reform at the Department of Health and within the nursing home industry in Oklahoma.** The case is an example of the dedication Jerome brings to his work as a public servant.”

**Statement of Senator Patrick J. Leahy
Ranking Member, Senate Judiciary Committee
Hearing on Judicial Nominations
June 15, 2006**

Today, the Committee will consider the nominations of three candidates for lifetime appointments to federal courts. Jerome A. Holmes, who has been nominated for a seat on the Court of Appeals for the Tenth Circuit, Daniel P. Jordan, III, who has been nominated to be a judge on the U.S. District Court for the Southern District of Mississippi, and Gustavo A. Gelpi, who has been nominated to be a judge on the U.S. District Court for the District of Puerto Rico. I have already heard plaudits for Mr. Gelpi.

Mr. Holmes was initially nominated to fill a district court seat in Oklahoma. The White House renominated him after Judge James H. Payne asked the President to withdraw his nomination to the Circuit Court. That withdrawal came following public reports that Judge Payne had ruled on a number of cases in which he had a conflict of interest. These types of conflicts are a violation of federal law as well as canons of judicial ethics and have no place on the federal bench. Certainly, they should not be rewarded with a promotion.

While in practice, Mr. Holmes has written letters and columns on such topics as affirmative action, discrimination, juror racial bias and school vouchers. These columns raise concerns about how Mr. Holmes might rule from the bench on civil rights issues. I hope Mr. Holmes will use this opportunity to speak to these concerns.

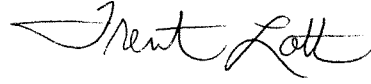
In one column written after the Supreme Court's landmark affirmative action decision, *Grutter v. Bollinger*, Mr. Holmes criticized the Supreme Court for missing an "important opportunity to drive the final nail in the coffin of affirmative action" and said, "[t]he court did not go far enough: Affirmative action is still alive."

In a letter to one publication, Mr. Holmes criticized claims of race discrimination based on forced assimilation, characterizing a doctor's complaint that his colleagues had "negative reactions to his dreadlocks" as "naïve". Mr. Holmes has also written dismissively about concerns raised by a criminal defense attorney about racial prejudice at criminal trials, describing the concerns as "harmful... because it undermines public confidence in the fairness of the criminal justice system."

The Committee has received a letter expressing "grave concern" from a number of organizations concerned with civil rights, the Leadership Conference on Civil Rights, the NAACP, MALDEF, and many others.

I welcome the nominees today as well as their friends and families.

#####



Senator Trent Lott

Statement of Introduction for Daniel P. Jordan III

Judicial Nomination Hearing

Thursday, June 15, 2006

Mr. Chairman, it is my pleasure to introduce Daniel Jordan to this committee. I am truly delighted that the President has seen fit to nominate Dan to the United States District Court for Southern Mississippi. In Mississippi, Dan's nomination has received bipartisan support and praise. A well respected litigator, even those who have opposed him in the courtroom feel that he is an excellent choice to serve in the Federal Judiciary.

Dan is a graduate of the University of Mississippi (*Cum Laude*) and of the University of Virginia Law School – where he was on the Editorial Board of the Journal of Law and Politics. He is currently a partner with Butler, Snow, O'Mara, Stevens & Cannada - the largest law firm based in Mississippi. In his private practice, Dan has demonstrated the knowledge,

professionalism, fairness, temperament, and skill that make him ideally suited for the Federal bench.

Dan has a history of work in public service. Before attending law school, he gained experience working in the United States Department of Interior and later as a Legislative Aide for a then-freshman Senator from Mississippi. Since returning to Mississippi, he has continued to serve the public through numerous philanthropic outlets.

He has served as the coordinator for the Jackson, Mississippi based “Stewpot Legal Clinic” – an organization providing legal assistance to the homeless. His tireless efforts prompted the executive director of the Mississippi Volunteer Lawyers Project to recently proclaim of Dan: “Words cannot express how he has given his time. He takes time out of his busy schedule to give back ... He is just great.” (*as quoted in the Clarion Ledger*)

He has been named one of Mississippi’s “Top 40 under 40” by the Mississippi Business Journal and honored as “Jackson’s Finest” by the Mississippi Multiple Sclerosis Foundation. He is an active member of

Christ United Methodist Church in Jackson, MS, and is a loving husband and father of two.

Mr. Chairman, Mr. Jordan's nomination should come as no surprise given his education, experience, reputation, and temperament. I look forward to the committee's swift approval of this fine nominee, and to quick confirmation by the full Senate.



ROBERT G. McCAMPBELL
Direct Tel: 405.234.3254
Direct Fax: 405.272.5936

mccampbr@crowedunlevy.com

June 14, 2006

Senator James M. Inhofe
453 Russell Senate Office Building
Washington, DC 20510-3603

Re: Jerome Holmes

Dear Senator:

I write to support the nomination of Jerome Holmes to serve on the United States Court of Appeals for the Tenth Circuit. Having served as United States Attorney for the years 2001 - 2005, I am well acquainted with the very high standards expected in the federal judicial system, and I know that Jerome would be an outstanding addition to the bench.

I have known Jerome for many years in the course of us both practicing law in Oklahoma City. I worked closely with Jerome when we were both Assistant U.S. Attorneys in the early 1990s and observed first hand Jerome's work ethic, professional excellence, and intelligence.

Later when I returned to the U.S. Attorney's Office in 2001, I had the opportunity to work very closely with Jerome again. One of Jerome's strengths is his ability to take on and be successful with the hardest and most complex tasks. For example, he served as Anti-Terrorist Coordinator for the Western District of Oklahoma. He made a success of that position because of his ability to analyze the complex issues involved, his ability to work well with many different government agencies, and his outstanding judgment. He also proved himself to be an outstanding administrator in his service as Deputy Chief of the Criminal Division.

One of the most significant cases Jerome prosecuted was a public corruption case involving the Oklahoma Department of Health. In that case, a nursing home owner had been bribing the Deputy Commissioner of the Department of Health. Jerome tried the case, won convictions, and

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Senator James M. Inhofe
June 14, 2006
Page 2

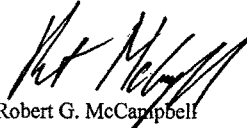
won the appeals.¹ The case was significant not only because it was a complex and difficult public corruption case, but because it led to material reform at the Department of Health and within the nursing home industry in Oklahoma. The case is an example of the dedication Jerome brings to his work as a public servant.

Jerome's character is beyond reproach. He approaches every task with the highest level of professional integrity and ethics. He has the right temperament for service on the bench as well. He can be counted on to be courteous, fair, and reasonable in any endeavor.

Jerome is well liked and well respected within the local bar. His ability to get along with people and inspire trust in others is illustrated in his election as Vice President of the Bar Association for the State of Oklahoma and his selection to serve on prestigious community boards such as the Oklahoma Medical Research Foundation, the Oklahoma Academy for State Goals, and the Oklahoma City National Memorial Foundation.

Jerome would be an outstanding court of appeals judge. He possesses the judgement, intelligence, professional excellence, and integrity to be a truly great judge.

Sincerely yours,



Robert G. McCampbell

RGM/pk

¹ *United States v. Van Meter*, 278 F.3d 1156 (10th Cir. 2002) and *United States v. Smart*, 278 F.3d 1168 (10th Cir. 2002).



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CHRISTOPHER R. GRAVES

murphyb@crowedunlevy.com

June 13, 2006

VIA FEDERAL EXPRESS

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Jerome A. Holmes

Dear Senator Specter:

I write in support of the nomination of Jerome A. Holmes to the Tenth Circuit Court of Appeals. After a distinguished career in the Office of the United States Attorney for the Western District of Oklahoma, in August, 2005, Jerome joined our firm as a director. Jerome has already assumed firm leadership positions as the chair of both our Diversity and Business Development Committees.

Jerome is thoughtful and principled in all that he does. The other directors of this firm quickly learned to respect and rely upon him. Jerome has been able to represent the clients of the firm and become an integral part of our firm through his outstanding analytical abilities and his excellent temperament.

In fact, Jerome Holmes is a paradigm for the judicial temperament and discretion that we expect of a judicial officer. He is the most articulate and well spoken attorney I have had the opportunity to work with, and is easily able to ponder multiple sides of complex issues and arrive at a thoughtful analysis.

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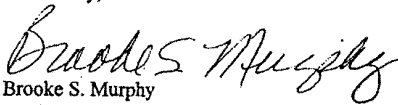
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The Honorable Arlen Specter
June 13, 2006
Page 2

Jerome has long been active in both the Oklahoma Bar Association and the Oklahoma County Bar Association and is now serving our profession as the vice president of the Oklahoma Bar Association. He has earned the respect of the legal community, both bench and bar, in this city and state.

Jerome Holmes will fill the role as a member of the Tenth Circuit Court of Appeals with distinction and the highest level of professional integrity. I take great pleasure in sending my highest recommendation of Jerome Holmes for this important judicial position.

Yours truly,

A handwritten signature in cursive script, reading "Brooke S. Murphy".

Brooke S. Murphy
President

BSM/kc